IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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Sarah Aronson, M.D., Plaintiff,	)	
vs.	)	Case No. 1:10-CV-372
	)	Christopher Boyko, J.
University Hospitals of Cleveland, Defendant.	)	

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Deposition of Sarah Aronson, M.D., the plaintiff herein, called on behalf of the defendants for cross-examination, pursuant to the Federal Rules of Civil Procedure, taken before Constance Versagi, Court Reporter and Notary Public in and for the State of Ohio, pursuant to notice, at the offices of Ogletree Deakins, 4130 Key Tower, Cleveland, Ohio on Monday, December 13, 2010, commencing at 9:12 a.m.

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INDEX

- - -

E X H I B I T S

E X H I B I T S (CON'T)

Defendant's:	Marked
R	165
S	170
T & U	171
V	172
W	184
X	192
Y	199
Z	201
AA	205
BB	211
CC	213
DD	214
EE	215
FF	216

- - -

APPEARANCES:

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Also Present:

Matthew Norcia, M.D.
Marcie Mason

- - -

(Defendant Exhibit A
Marked for identification.)

SARAH ARONSON, M.D.

of lawful age, being first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION

By Mr. Bixenstine:

Q Dr. Aronson, we just met. My name is Bart Bixenstine. I'm here on behalf of University Hospitals of Cleveland. This is my opportunity to learn about the factual circumstances you are able to provide concerning the lawsuit you filed.

Have you ever been deposed before?

A Not in this sort of setting. I've provided testimony before.

Q The difference perhaps between this and a sort of formal testimony is we take breaks when we want. There are no judges around. Similarity is you are under oath as if you were in court, same thing.

The critical thing I think from my perspective is that you're clear about the kind of questions that I ask. They make sense

to you. I'm here venturing into areas where -- outside of my personal expertise, so I may not articulate things as they should. You need to make sure you have a question that makes sense before you answer.

If I ask about dates, times, which I may do, just give me your best estate of those things, as long as you are not guessing. Some people remember certain dates very precisely. Other dates are a matter of to the month, or the year, whatever it may be. Give your best estimate. If you find yourself guessing, make it clear I would be guessing. I may ask about conversations, it's a similar thing. Some people may remember the exact content of certain aspects of some conversations. Some people have better memories than others. If you were able to do that, fine. Otherwise, again your best recollection of the substance or gist, or whatever level of recollection you have is fine.

If there is something that I'm asking about that doesn't make sense, simply asking to have it rephrased is fine. If I'm unclear about what the problem is, I'll ask you.

Typically it's often times pretty self-evident once you speak up. We will go from there.

A I understand.

Q We take breaks whenever you ask. Hopefully we will get done as quick as possible. I know you've flown in yesterday, you probably intend to fly out today.

As a formality, is there any reason by why of medication or any other circumstance that you cannot testify fully and completely and truthfully today?

A No.

Q What I've handed you is a document that is a set of responses that were provided to me through your counsel several months ago. In some respects I would like to get some updates of those responses. I'm going to go over some of them.

For example, in answer to question 1 you indicated your current address as you see it there was in Maryland. Does that remain your current address?

A No. My current address is in Shaker Heights, Ohio. 19815 Shelburn Road.

Q How long have you lived there?

A Since August of this year.
Q Before that were you at the address listed here?
A Yes.
Q You lived there with others?
A Yes.
Q They would be who?
A My partner, Virginia Ayers, and our three children.
Q If you will turn to page 3, I'm focusing on the answer to question 4. When I went through some of the records myself -- we will start. The first paragraph, you list a set of individuals that you describe as having given written evaluations of you, correct?
A Could you restate your question?
Q There is a set of individuals listed in the first paragraph under the answer.
A Yes.
Q They start with the following individuals have given written evaluations of Dr. Aronson, you see that list?
A Yes.
Q I'm assuming, but I'll ask now, you reviewed this list to make sure it was complete as best

you could recall it?
A Yes. I did review it at the time. To the best of my memory, it was complete.
Q It's not a test. I have a question about one person in particular. I assume it's a doctor, Dr. Celina Hayak, H A-Y-A-K. Would that be an individual that belongs on that list? Thankfully whoever put this together, I assume it is Greg, did this in alphabetical order. It makes it reasonably easy to track that down. I don't see her on the list, I'm wondering if she does belong?
A Yes, I do not see Dr. Hayak's name on this list. He --
Q It's a he, thank you.
A Yes. He did provide an evaluation.
Q He would belong on the list?
A Yes.
Q What about an individual by the name of Raymond Graber, G-R-A-B-E-R, would that person belong?
A I do see his name on the list.
Q Then I missed it, thank you. I see Ray Graber. Thank you.
We're going to be going into some

assessments in particular from these individuals. I would first like to ask a couple of general questions about this group as a way of moving this along as efficiently as we can. I'm going to ask it as a group, then you can pick out any individuals that either belong in the question I ask or don't. I'll give you an example of that.

Each of these individuals of course were individuals who gave written evaluations of you. The first question I have about them is, are there any of these individuals that in your assessment of it did not make their assessments of you in good faith?

A Could you clarify what you mean?

Q Yes. I mean -- I'll ask it a different direction. Were any of these individuals in your judgment, in the assessments they made of you, did they make those assessments with anything other than their own -- from anything other than their own objective and good faith view of your performance?

A I would say that is a difficult question to answer as I don't know for certain the motivations.

Q Correct. I can only ask you what you know. By answering that you don't know, doesn't mean necessarily that you are admitting that they did. I'm merely asking whether you have reason to believe -- maybe that's the best way to put it to you.

Do you have any reason to believe any of these individuals in their assessments of you acted in anything other than good faith? Perhaps that is the best way to phrase it to deal with the concern you just raised?

A I do feel that there are individuals who provided written evaluations, the content of which was colored by or motivated by something other than a purely objective dispassionate viewpoint.

Q Let's identify who those are.

A I would identify Dr. Hacker.

Q Dr. Lisa Hacker?

A Yes. Dr. Gerald Johnson, Dr. Norcia, Dr. Rubin, Dr. Zahniser. I might consider adding Dr. Wallace, but you are asking about written communication. I'm not certain at this point, I don't remember at this time, what various things he communicated to me in

writing. I would have to defer whether I would add him to that list. Those would be the ones at this time I would identify at first reading.

Q Take another read if you need to. Keep in mind that the objective of this process is for me to question you one time, one time only. For that reason, I need you to do your best to be as complete in your answers as you are able to. Understanding -- by the way, that raises a point.

Throughout the day, if something comes back to your mind. For example, with Dr. Wallace, as an example, at 11:00 a.m. This morning I'm asking about something totally unrelated. All of a sudden a reason comes into your mind why Dr. Wallace either belongs or doesn't belong n the list, you remember that, speak up. The record, so to speak, is not set until we're done. Can always be modified.

Do your best, take a review of this. If there is anyone else you feel you should add, based upon your knowledge and best understanding at this time, please let me know

who they are.
A I think I would add Dr. Dumas to that list as well.
Q Is your answer complete then, the best you are able to identify it at this time today?
A At this time, yes.
Q Going in alphabetical order for want of anything else, why did you include -- looks like Dr. Dumas is first. Why did you include Dr. Dumas on this list? Correct question is why did you identify Dr. Dumas in response to the last question?
A Could you clarify more specifically what you are asking for?
Q Go back and please read -- I'll do my best to start.

You indicated you felt certain individuals in their written communications were colored by something other than purely objective circumstances; is that a fair characterization of what you said?
A Yes.
Q I want to know why you put Dr. Dumas on that list?
A My reason for putting her on the list is that

I feel in looking at her evaluations of me over a roughly three year period, that there was a pattern of negative commentary that did not appear to reflect either my development as an anesthesiologist, or events as they occurred, as I worked with her. So my sense was that these comments were not reflective so much of criticisms of my developing clinical skills, but arising from preformed opinions.

Q Is that a complete answer to the question for her?

A Yes.

Q In other words, is there anything that she did or said separate and apart from the content of her assessments, that contributed to putting her on the list that we're going down through here?

A Not that I can remember at this time.

Q Do you know of any other residents who were subject to negative opinions from her, of a similar -- that you would characterize in the same way as you characterize her assessments of you?

A I'm not privy to that information.

Q I know you wouldn't be privy to the documents

themselves. You would only know if people told you. Here again, keep in mind what other people tell you about things is fair game here today. It might not be fair game at a trial. It's fair game as a matter of investigating, which is what we're doing here today. If someone told you something about their assessments, about her assessments, Dr. Dumas' assessments, that would be potentially something you could respond with. I understand you don't have access to the actual written assessments of this doctor to other residents. I understand.

A I have some memory of comments and opinions from other residents, but I would be unable to produce at this point specifically who I was talking with or when, so it would be somewhat imprecise.

Q You would be guessing?

A I would be guessing as to the who and the when and where. I remember the gist of comments that have been made.

Q The gist would have been what?

A I think there were comments made that there was a feeling that Dr. Dumas exhibited

considerable favoritism, was not supportive of residents, some in particular.

Q Favoritism on what basis, if you know?

A I can't say I know.

Q Was Dr. Dumas, in your judgment, competent to assess you as a resident at the time she did?

A Yes.

Q Are there any reasons besides those you just mentioned, by that I mean you gave me an answer to why you included her in your list of individuals whose assessments were colored other than by purely objective circumstances. Is there any other reasons you would offer besides those you just gave me, for why the residency program should not have given weight to her assessments of you?

MR. GORDILLO: Objection, foundation.

Q Go ahead. Let me explain that if I may. Lawyers have to make objections. It's required under the Rules. The objections will get weighed upon down the line. They may or may not have merit. Absent asking some sort of scurrilous type of question, Greg can explain what that means, you have to answer as

best you can. If I think I can fix the question to make it better, I normally try. In this case, I think the reason for his objection has nothing to do with how the question was structured, well, foundation.

Read back my question if you would, so it is back in Dr. Aronson's mind.

(Question read.)

Q Greg has an objection, go ahead.

A At this point I can't think of any other reasons.

Q Let's go to then Dr. Hacker. What is it about Dr. Hacker and her actions or statements that led you to include her as someone whose assessments were colored by something other than purely objective circumstances?

A In that circumstance, my reasons for including her on this list would be that she was a faculty member who would -- she would typically be -- she could be critical in many circumstances in an appropriate sort of way. Some faculty lean towards being more critical than others. It's someone's teaching style, which I had no objection to. However, during the later part and towards the end of my

residency there were -- here I am estimating one or two incidents of criticisms that she -- I'm sorry?

Q I'm sorry. I didn't mean to distract you.

A That she documented, that in my opinion didn't either reflect the facts accurately, and were excessively negative. Again not appropriate to the circumstances.

Q Did you -- is that as complete an answer as you can give as to why you included her on the list, or is there more?

A I would say that is it, more or less.

Q Did you have reason to believe her assessments of you were not made in good faith, whether they might have been inaccurate or overly critical as her style, or for some other reason, did you have reason to believe her assessments of you were not made in good faith?

A I believe as we've previously defined the term, I would say that is why she is on the list.

Q Maybe I should ask it this way. Do you have some sense she had some ancillary motive for why she gave the criticism she did, other than

the fulfillment of her responsibilities as an assessor?

A I don't know what Dr. Hacker's motivations were.

Q Dr. Dumas same thing, did you have any sense that Dr. Dumas was driven by some ancillary motive in her assessments of you?

A I would say again, I don't think I can comment on her motive.

Q A lot of times in life people can comment on people's motives, sometimes they can't. I can only find that out by asking. Sometimes people say or do things that make their motives if not clear, certainly suspect, or whatever. I can only ask and find out what you know or don't know?

A Understood.

Q Did you consider her, Dr. Hacker, to be competent to assess you as a resident?

A Yes.

Q Were there other reasons you could give me, besides those you've just given me for why the residency program should not give full weight to her assessments of you?

A Not that I can think of at this time.

Q Dr. Johnson then, let's turn to him. Why did you include him on the list as someone whose assessments were based on something other than purely objective circumstances?

A I worked with Dr. Johnson in the intensive care unit periodically --

Q Could I interrupt you to complete something?

A Certainly.

Q Which unit -- were each of these individuals, would they be associated with a particular unit? Like Dr. Johnson you say you worked with him in ICU. Would that mean Dr. Hacker you worked in ICU or some other unit, same for Dr. Dumas?

A Dr. Johnson was an exception in that he worked only in the ICU. There are some faculty who worked in both the ICU and operating room. I would be supervised by them in different situations.

Q Fine, that is not a good question. Go ahead, why did you include Dr. Johnson in your list then?

A Dr. Johnson, I, and I would venture to say many residents, found him very difficult to work with. In my experience of working with

him over the course of several rotations, spread out over the three-and-a-half years, it was my experience that there was usually at least one resident, usually the senior resident, with whom he would be in conflict.

During the second half of my residency, I found that when I would work with him, it appeared difficult, if not impossible, to avoid being that person. My sense was that -- how can I put this. Very concretely what would occur over the last few times that I worked with him, his behavior in my view became increasingly inappropriate, overtly hostile. Assigning blame inappropriately. Making it difficult to carry out the work of taking care of patients in the ICU. So the written evaluations he provided for me was in that context.

Q Is that a complete answer then? I ask that sometimes when the answer goes for a bit of time. I don't want to interrupt. I need to make sure there is closure. If not, please continue.

A No, I would say that summarizes it at last at this time.

Q When you talk about behavior being increasingly inappropriate, you mentioned being overtly hostile?
A Yes.
Q If you put aside -- you also then mentioned something about content of the hostile assessments. That is the content of a writing. Putting the writing aside, was there anything about his behavior that was inappropriate, beyond what you just described, which is overt hostility in his manner toward you, anything else you considered inappropriate about his behavior?
A I'm trying to decide the term hostility encompasses the range of difficulties that occurred. I think that I would say for the time being, I would say that covers it at least in relation to the working relationship, the difficulties there.
Q Other relationship, was there some other aspect of his relationship with you, in which he was hostile or behaved inappropriately in some other way?
A No, there wasn't any other contact that I had with him. I think by that I meant one could

comment on broader issues in terms of the clinical setting, how that was met. In terms of, specifically in terms of his working relationship with me, I think that is an adequate summary for the time being.

Q What would make it change, you talked about for the time being? I'm a little troubled by that.

A Unless I think of some other better way to describe it.

Q Very well. Did you consider him competent to assess you as a resident?

A I would say I had serious doubts about his competency to be a faculty member.

Q The reason for that would be what?

A He had a clinical style and a way of doing things that was different. Occasionally made people uncomfortable. That would have been not a problem, had his professional behavior been more appropriate. I think that together with his behavior as a faculty person, raises the question as to his competency.

Q The professional behavior you are talking about, is that the hostility that you are referring to, or something beyond that?

A I would say that would be the primary thing.
Q Is there something else that would fit in even if it's not primary, as part of the professional behavior concern you had?
A I think there were other areas of difficulty in working with him that had more to do with efficiency, communication, work flow, that were not so much taking place in a relationship to me personally, but more of a general kind of working level of functioning.
Q Can you describe in general terms what that was about?
A In general terms --
Q I'm just a lay personal.
A In my experience, Dr. Johnson was not very efficient. I think that he became stressed if he had a lot of patients to keep track of. It took him a long time to get things done. His general management I think of the ICU when he was -- during those times he was on, in terms of his leadership of the team, I think was he was not as efficient or easy to work with as some faculty were. That more or less sums it up.
Q Were there other faculty or residents that

shared your view of Dr. Johnson's -- shared your view as to the issues you raised with Dr. Johnson?

A In my opinion, yes.

Q Who would those people be?

A I think there are many. The most salient that comes to mind would be there is a Dr. Abehausen, she became a critical care Fellow. She was a year ahead of me. There was -- I can remember a point at which she was in fact refusing to work with him. Although I think she did eventually.

Dr. Elliot Rowe, who I last I heard was I believe on the faculty now at the residency. He was also a year ahead of me. I remember Dr. Johnson actually kicking him out of the ICU once during rounds after he was raising, in my view, a fairly appropriate question about patient management.

Those are two examples I can think of. Although, it is possible that there are others. Those are two of the most concrete examples I can think of.

Q Are those the only ones that come to mind as we speak? You can raise others later if you

have them.
A Those are the two that come to mind, that I can remember the specific individuals involved.
Q Did you consider that Dr. Johnson made his assessments of you in other than good faith, meaning he acted from some motive other than a motive to comply with his responsibilities as an assessor?
MR. GORDILLO: Could you read that question back, please?
(Record read.)
A I would say the actual written evaluation he provided, was provided in response to his paperwork responsibilities as a faculty member, fulfilling those responsibilities in writing that evaluation. I don't feel that the content that he wrote was an objective, good faith evaluation of my abilities.
Q Was it based on some ancillary motive, a personal animosity toward you, any type of motive other than motive to fulfill his responsibilities as best he believed them to be, if you know?
MR. GORDILLO: Objection, form.

Q Go ahead if you know.
A I don't know his motivations, I certainly had the strong impression he carried a personal animosity.
Q Did that impression come from something other than circumstances you described to me already?
A No. It would be really from that context.
Q Are there reasons why the residency program should not have given full weight to his assessment, other than what you provided to me already? Are there circumstances that bear on the weight that the program should have given his assessments, other than what you told me?
A Not that I can think of at this time, other than what I said.

MR. GORDILLO: Can we have Dr. Aronson step out for a second? I want to address a point that just came up in her testimony but I don't want to discuss it in front of her.

MR. BIXENSTINE: Talk to me?

MR. GORDILLO: Yes, I don't want to give any appearance of coaching Dr. Aronson.

MR. BIXENSTINE: Fine. Off the

record.

(Discussion had off the record.)

Q What Mr. Gordillo mentioned to me, let me raise one question with you related to that.

These individuals are all listed because, in your judgment, the content of their assessments was colored by something other than purely an objective assessment of you?

MR. GORDILLO: Objection, form.

A Um-hum.

Q When I ask about then good faith, what I'm asking about is whether they have motives other than to fulfill their responsibilities, which is do you understand the distinction, or do we need to go through that?

A I'm not sure I do understand the distinction.

Q Someone could be motivated by personal animosity. Someone could be motivated because they don't like women. Someone could be motivated because they don't like people who already have two degrees, think they need to have a third. There could be a lot of different reasons why people are motivated for what they do, beyond fulfilling their

responsibilities as an assessor. That is what I'm getting at. What I'm looking for, if you need to supply me with anything with respect to Dr. Dumas or Dr. Hacker, Dr. Johnson in light of what I just said, that's what I'm after. Whether any of those individuals, from what you observed of what they did or said, or what other people said about them, doesn't matter what the source is, you have the assessment they acted from other than the motive of fulfilling their responsibilities. That is what I mean by good faith, lack of good faith.

A So I don't necessarily need to know what their motivations are?

Q I'll ask you what you believe the motivation to be. If you don't know, you don't know. I can only find out what you know. That is all I can do today. I wanted to clarify for you what I'm getting at when I'm asking about whether they are acting in good faith. I'm asking whether they are acting from some motive other than to fulfill their responsibility as an assessor. Could be personal animosity, could be because they

think there are too many women anesthesiologists. It could be because they think you had enough education already, why are you in there now, whatever it might be, that is what I'm after.

A I would say, that was I believe in some ways the question that we started with, so the names that I picked out of this list here would be those individuals that I felt were expressing views about me that were not -- that were influenced by feelings or opinions or thoughts other than an objective assessment of my abilities.

Q For Dr. Dumas, what kind of motives did you believe that Dr. Dumas was acting under, motive or motives, besides to fulfill her responsibilities as an assessor?

A I would say regarding Dr. Dumas, I don't know what her motivations were, but she appeared to have negative feelings about me that were separate from any dispassionate, clinical assessment of my clinical abilities. Those were expressed in the context of the evaluations.

Q Correct. Thank you. For Dr. Hacker?

A I would say the same thing.
Q Dr. Johnson?
A Yeah, same thing. Yes.
Q So in the case of all of these, the sense you have of their acting out of a motive other than fulfilling their responsibility of an assessor came from the contents of their assessments of you, and their interactions with you on the floor?
A Yes.
Q That you described already?
A Yes. I would say with Dr. Johnson, there was as I described earlier, there was ongoing interpersonal behavior that I experienced with him that reinforced my opinion of his written evaluations.

That was far less than the case with Dr. Hacker, who was generally in my interpersonal work with her was generally appropriate.
Q You had no interpersonal issues with Dr. Hacker then?
A Not that I was aware of or that -- I should rephrase that, because as I would intermittently receive some of these written

evaluations, it occurred to me perhaps there were interpersonal problems there that I had not been aware of. I would say that she was -- she behaved appropriately at the time when we were taking care of a patient together. In contrast to Dr. Johnson, who it was clearly -- it was difficult to work with him on a day-to-day basis.

Q Dr. Dumas, same thing, you had no issues in terms of interpersonal behavior?

A I would say with Dr. Dumas it was probably somewhere in between. I think it was fairly clear to me early on that for whatever reason she didn't like me very much. Although it was never clear to me why that was. We could be effective working together. It was not as interfering as it was with Dr. Johnson.

Q Interpersonal behavior involving Dr. Johnson, I know you mentioned the hostility, you mentioned your various assessments of his efficiency, his getting stressed and so on, is there something else to his interpersonal behavior that contributes to your assessment of him, you haven't told me about yet?

A Not that I can think of at this time.

Q Dr. Norcia, what about Dr. Norcia?
A I would say that going back to we are discussing the written evaluations at this point, is that correct, for the most part?
Q Let's make sure that we're clear on that. Are there other types of evaluations besides written ones that are -- is there something, is there a portion of the assessment process that is beyond -- well -- I understand -- let's put it this way. It's fair to say, is it not, in some circumstances, perhaps not all of them, the individuals assessing your performance would give you oral assessments at the time, then would follow-up with their written assessments?
A Giving oral or verbal assessments at the time of when one is taking care of a patient with a supervising faculty, that is the academic ideal, that one would provide some verbal feedback at the time. Provide written documentation at a later date. I would say that I couldn't give you a number, that doesn't happen all the time.
Q I understand that. But I'm saying there are occasions apparently when assessments would

have been provided to you close to contemporaneous with the circumstances, then followed up with written material later?

A Yes, there are times that would occur.

Q In your responses with respect to Dr. Dumas, Dr. Hacker and Dr. Johnson, were you only referring to their written assessments?

A In the case of Dr. Hacker, to the best of my memory, her written criticisms and negative statements would often come as a surprise to me after the fact. In the sense that when we were taking care of patients together, no concerns would be expressed. So I would conclude that experience with the feeling that there were no -- that she did not have a negative impression or assessment. Then sometime after the fact, I would receive the written evaluation.

Q So for Dr. Hacker, there was nothing in oral assessments of you that contributed to why you put her on the list that we are describing, fair enough?

A Not that I can remember at this time. Not that I can remember at this time.

Q Dr. Dumas, would there have been anything in

any verbal assessments, if there were any, that would have contributed to why you had Dr. Dumas on the list we're now going down?

A I would say my memory of my interactions with Dr. Dumas are not sufficiently clear to answer that one way or the other.

Q Dr. Johnson, anything in any verbal assessments he provided you, if there were any, that contributed to why he was placed by you on the list we're going down?

A As I mentioned before, the working, my working relationship with Dr. Johnson was -- his general demeanor toward me was very negative. So I would say that there was a great deal of verbal communication.

Q Was there anything that he communicated to you verbally that you can recall, that contributes to why you placed him on this list?

A I don't know that I could. I don't know that I could quote him specifically.

Q Remember what I talked about, it is not a question of quoting specifically. If you can give me any gist, something beyond mere guessing, that is substantive information I would like. I don't want you to guess.

A If I were to give an example, again without clinical specifics, in the course of making rounds, from bedside to bedside, in the intensive care unit, there was a point at which he would argue with almost every statement that I would make regarding patients. So in that sense, it was I guess I would consider that a negative feedback as we would go along.

Q Was there anything in verbal communication to you that contributed to him being on the list, besides substantive communication, meaning communication bearing on the particular clinical process that you and he were going through?

A I'm not entirely sure I understand the question.

Q He could get personal, could be insulting personally. There are all sorts of ways you can communicate beyond disagreeing with a particular course of clinical action. I was after whether there was anything in his verbal communications that contributed to why he's on the list we're going through, besides communications that were a matter of

disagreeing about a clinical course of action?
A I would say that, I don't remember at this time any specific personal insults or attack ranging outside of the work environment. I would say that his argumentativeness with me appeared irrational, in that he would argue with a point because it was coming from me, not with the rest of the team that was there. Of course in that argument he was impugning my clinical abilities, my working, the quality of my work or my clinical thinking. I would say that it was a pattern that appeared to me to be irrational.
Q Was this in a circumstance where you were the senior resident --
A Yes.
Q -- you are describing?
A Yes, that was when it became the worst, yeah.
Q We were just starting in with Dr. Norcia. I'm interested in why it is you include him on the list of individuals whose assessments of you were, based on your assessment, something other than purely objective circumstances?
A I would say that regarding his written evaluation of me, that he submitted at the end

of December, was it 2008? I would like to be sure about that.

Q It is.

A I felt that was not a good faith evaluation for a number of reasons.

One was I felt that the timing of it was such that it was an attempt to generate written documentation to support after the fact a decision that had been made, an adverse decision that had been made in relation to me, or was in the process of being made.

The time period that he identified, during which he states that he observed clinical skills that he felt were not up to par, was a period of time when I was working hours that were beyond the limit imposed by ACGME. I saw no reflection in his evaluation that he was aware of the potential affect of fatigue during that period of time. Nor could he provide me with any specifics as to what he observed that raised concern.

A third reason I can think of is that he was referring to an earlier period of time in October, I believe, in that written evaluation.

Q Referring to a period of time prior to October?
A No, earlier in October.
Q Okay.
A I had worked with him in the OR, not long, sometime in December, not long before he wrote that written evaluation, and stated to me following the day we worked together, when I asked him specifically if he had any feedback at that time, he told me he did not have concerns with performance when I worked with him a few days prior to that written evaluation. At least at this time that would be the main reasons why I would consider that not to be in good faith.
Q You mentioned timing, you mentioned working beyond certain hours limits, you mentioned his communication to you concerning your working with him in December; those were the three things?
MR. GORDILLO: Objection.
A Yes, there may be others.
Q Go ahead.
A At this time, those are the ones that come to mind.

Q You are telling me you cannot recall any others at this time. Obviously, like anything else, something could come to your mind later, fair enough?
A Um-hum.
MR. GORDILLO: You have to say yes or no.
A Yes.
Q Did Dr. Norcia, at the time in October when you and he worked together -- first of all, let me ask. The written evaluation at the end of December concerned the October time frame, did it not?
A Yes.
Q Did Dr. Norcia at the time that you worked with him in October, communicate to you verbally his assessment of you -- start that again. Did Dr. Norcia, in October, during or shortly after when you worked with him, communicate his concerns with you at that time verbally?
A During the week in question, no.
Q Shortly afterward?
A There was some mention during the meeting with Dr. Norcia and Dr. Wallace and myself, shortly

afterwards in October. I would say it was not specific or in any depth.

Q What do you recall him saying then at the October -- we're going to get into the October meeting by the way, you raised it with Dr. Norcia in context of the list, perhaps we can focus on that for the moment, we will follow up with the rest. What do you recall him saying at the October meeting pertaining to his concerns arising from your work with him earlier in October?

A I remember him saying that he felt that it took me a long time to answer when asked, say if a question came up during rounds, that it took me a long time to answer a question. He said that when I did get around to answering the question, I would get it correctly. It did seem to take me a long time to express my thoughts.

Q Is there anything more you can recall than that?

A Not that I can recall.

Q Again this is not a test, so I may have something to help you with that.

(Defendant Exhibit B

marked for identification.)

Q I'm handing you what is marked as Deposition Exhibit B. I would like you to focus on the second page of that. Not without, please review the first page as well. My question will bear on the second page.

First of all, does this reflect, at least in some part, I don't know if it's total, in some part the written evaluation at the end, that was entered into the system at the end of December you were referring to?

A This looks like what I perceived in December.

Q Correct. It's a screen print, it may not have the same exact features of something you may have looked at. I'm interested in whether the content accurately reflects the written evaluation you are referring to that was entered into the evaluation system I believe you testified at the end of December of 2008?

A To the best of my memory, yes, this is what I received. I believe it was, when it came to me, I think it was December 31st or something. I don't know if there is a delay or something.

Q There is an entry down, two-thirds of the way

down the page, under acknowledgement comments, would you review that for a minute?

A Um-hum.

Q This goes to the question I was asking you a minute ago. Take a look at that for a moment.

A Um-hum.

Q Does this give you any help in recollecting anything that Dr. Norcia communicated to you, at the end of the rotation, using the words that are set forth there under the acknowledgement comment section?

A Well, to clarify, this was referring to October 6th to October 10th.

Q This being the evaluation itself?

A The evaluation is referring to observations from October 6th to October 10th. I received the written evaluation, as I recall it was December 31st. In any case, it was more than two months later.

When we receive these, if I remember correctly, it's a website. We would have to log onto the website, see what evaluations were there for us to read. At the bottom there is a place to electronically

acknowledge, that comes up at the bottom, to electronically acknowledge one has seen the evaluation and you read it. A place to type in a comment, which I did, I said thank you.

So you acknowledge receipt of the evaluation, there is a little, if I remember, a little drop down box, you can say yes, no, it was discussed with me verbally or was not. Then if you said yes, you identify when. I don't remember exactly, there are a limited number of choices when. When I say at the end of the rotation, that may have been, that may have been -- one of the few choices, how to identify the time frame. So, I don't think it's exactly accurate to say it was discussed with me at the end of the rotation.

I would say that this particular concern, while I was -- I believe I was informed in November that again that this was a concern, it was never really outlined, or explained, or assigned examples at any point.

Q It was discussed with you in the October meeting, I think that is what you testified earlier?

A I would say more that it was mentioned. I

understand we will discuss that meeting in more detail.
Q Correct. I think you described how it was mentioned previously?
A Yes.
Q Is that your best recollection of the first time it was discussed with you, meaning that is --
A Um-hum.
Q Of course this meeting I think was around the 14th of October, we will get to it in a minute. If it was, that is four days after the end of the evaluation period?
A Um-hum.
Q Is that your best recollection that having discussed it at the October meeting was why you checked the box that referred to this as being discussed at the end of the rotation?
A I believe I was perhaps thinking more about the November meeting. Of course there were -- let me think about that. There was a November meeting. This was already past the whole December leave.
Q The November meeting was -- the November meeting was six weeks after the end of the

rotation. The October meeting might have been within a week after the end of the rotation?

A The rotation was the entire month of October.

Q Is it fair to say this accurately reflects the evaluation period, or was the evaluation period something other than October 6th to October 10th, that is what it refers to on the first page here?

MR. GORDILLO: Objection, form.

Q Go ahead and look at the first page of this document.

A Your question is?

Q Turn it, I'll ask the question. Does the document accurately reflect that the period within which you worked with Dr. Norcia in October goes from October 6th to October 10th?

A I don't remember the exact dates. I do know it was very early in the month that he was covering the ICU. I don't remember the exact dates.

Q You were in the ICU rotation the entire month of October?

A Yes.

Q That is why, in your best recollection, your reference to this being discussed with you

face-to-face at the end of the rotation --
A I was likely referring to the more longer conversation that I had with the program directors in November.
Q Let me get back then, you can put that one aside for the moment. Let me get back to questions about Dr. Norcia.

You had referred to his evaluation that was entered into the system the end of December. You raised issues with respect to timing, your working beyond hours limits. Also to his communication to you after you worked with him in December. Those are three things I recall from your testimony.
A Um-hum.
Q As being reasons why you had placed him on this list. The question now is, are there other reasons?
A Yes. I would say that those reasons that I already mentioned are specifically pertaining particularly to this written evaluation.
Q How do you mean by that?
A In the sense that I think that they raise questions about the validity of this specific document.

Q What raises questions, I'm sorry?
A The reasons --
Q The three factors?
A Yes.
Q I'm trying to find out if there are any other reasons why you placed Dr. Norcia on this list besides what you've given me already?
A Yes, there are other reasons.
Q They would be what?
A How best to organize my thoughts. It was my experience, particularly during the last part of my residency, starting in my best recollection, starting in that October of 2008 to the end of August 2009, it was my experience, in my interactions with Dr. Norcia, that what he would communicate to me verbally and would suggest to me as to how he felt things should go, or events he thought should take place would not occur.

So there was a disconnect between things he would communicate to me as the program director, and then subsequently what would take place, which led me to wonder whether he was being dishonest with me when I was speaking with him. Whether he was doing

so to mislead me. Whether he was doing so because he had other intentions, was not comfortable expressing those to me. Or perhaps that he didn't have sufficient control over what occurred. That perhaps he honestly did think that things should go one way, but was not the person making the decisions in terms of my residency.

Just as an example -- you want an example?

Q I'm going to get to the example. The only reason I'm stopping here, I appreciate you letting me do that, is that keep in mind my question, my list here pertains to people's assessments of you.

A Yes.

Q As distinct from conduct of Dr. Norcia as the head of the program in terms of the overall process of your being a resident. I certainly want to get to that. This may be a reason why you consider his assessments to be less than objective. If it goes to something other than that, let's put it aside for the moment if you don't mind, focus on the reasons why you have him on the list as a person who provided

assessment based on something other than objective information.

Again, if you choose to continue based on that premise, fine. I want to alert you my sense of it is you are describing something separate from his assessments of you. Maybe I'm wrong.

A No, I would think that is true. I would say an additional reason I would consider -- an additional reason I would consider his faculty evaluation of me suspect, is that I found in the last part of my residency that his interactions with me were potentially dishonest.

Q Along the lines you just described to me?

A Yes.

Q Are there other reasons, we will get into some of the specifics later. Are there other reasons why you put him on the list as a focus on his assessment, besides those four things, the fourth is kind of a grouping, four categories of things?

A I would say that I had a sense that there may have been motivations that were not in good faith.

Q Okay.
A For example, altering the plan of action for example regarding adverse actions taken toward me would have appeared as a defeat. So there was a motivation to provide support for those decisions.
Q Any other reasons to put him on the list now? You referred to his motivations just now about providing support for decisions being made. You referred to a line of communications that took place between August and -- between November and August of 2009, and you referred to the timing issues, the working beyond limits issues, and the communication he had with you at the end of December about his work with you in December, those are the things I have so far in terms of categories. Anything else?
A Yes. I would say that as with some of the other faculty, I think that -- I think that there were inconsistencies between his previous assessments of me, and his assessments in the context of this adverse action that made me question his validity.
Q You are referring to inconsistencies between

assessments prior -- strike that.

You are referring to inconsistencies between assessments arising from his work with you prior to October, versus the assessment he made with you of your work in October of 2008?

A I would say there were inconsistencies between evaluations provided prior to October. Then subsequent to October, when we worked together, in December, in which verbally he had no concerns about my performance and his documentation of what occurred in October.

Q Is that what you mean by inconsistencies?

A Yes.

Q Anything else on Dr. Norcia then?

A Not that I can think of at this moment.

Q Dr. Rubin.

MR. GORDILLO: Could we take a short break?

MR. BIXENSTINE: Let's do that.

(Recess taken.)

Q We were going to turn to Dr. Rubin. I ask you to tell me why you considered her assessments of you were based on something other than objective circumstances, assessment of objective circumstances?

A I didn't work a great deal with Dr. Rubin.
Q I think I got myself a little out of whack here. The question is why she was on your list as someone whose assessments of you were based on something other than objective circumstances. That is the question. Go ahead.
A I didn't work a great deal with Dr. Rubin. My sense with her was that there may have been more of a personality incompatibility. I think that our work styles didn't gel very well. She strikes me as woman who has very strong opinions about things. Expresses them very strongly. We had some, I would say not major disagreements about --
Q You say not major?
A Not major disagreements about the management of the case. Not something out of the range of what might occur in a routine care of a patient.

I would put her on this list I think because my memory and my interpretation of what occurred as we were working together, was very different from her written evaluation, which was very critical. My memory of it, I

don't remember the specific content. My memory was it was very emotional. Again, I did not work with her a great deal. I would say that more or less general summary of why I would put her on that list.

Q She was competent to assess you as a resident?

A Yes.

Q Dr. Norcia was? I didn't ask that question.

A Yes.

Q Did you have any reason to believe that Dr. Rubin was making her assessments from some motivation other than to fulfill her responsibilities as an assessor?

A Yes, I think she was more emotional than objective.

Q Any other reasons why you questioned her motives, besides that?

A None that I can remember at this point.

Q Are there reasons why the program should not have given full weight to her assessments, besides what you told me already?

A Not other than I've expressed, that I can think of.

Q Dr. Zahniser, why is he on the list?

A I would say similar to Dr. Rubin, in the sense

I did not work with him a great deal. His initial evaluation that he wrote for me, if I remember correctly, was very soon after he first came to UH as a faculty member. It was to supervise the care of a patient undergoing heart surgery, and he expressed no concerns about our care of the patient during the course of the case. Made no critical comments, did not appear to be concerned at all with how we were managing the case. If I remember correctly it was myself and a junior resident. I'm not positive about that, but I believe there were two residents in the room. Yet his written evaluation was extremely critical.

My thinking is that if he truly thought those things at that time, when we were taking care of the patient, he would have behaved very differently. I'm not remembering his exact wording at this time. He was very negative about my functioning as a clinician in that context. So I question his objectivity as a supervising faculty person in that context or the accuracy -- I would certainly question the accuracy of what was

saying. I didn't agree with his description of the facts as well.

I believe there was a subsequent evaluation in which he offered me no comments. Coded it as satisfactory, but made some very negative comments in the text directed to the program director. Again, communicated nothing to me during the actual care of the patient.

When I see that kind of disconnect, between written and the supervisor's action or behavior, it makes me question his motivation or objectivity.

Q Is there something, do you have any sense of what his motives might have been then, other than to fulfill his responsibilities as an assessor?

A I can't say I know his motives. There was nothing that he ever actually said to me that would suggest motive to me.

It has occurred to me that during that initial interaction, he was new with the faculty. It was a clinical setting in which I felt fairly comfortable. It may have been a way to establish dominance. He's a very

experienced physician, but he was new, as I remember it. He was new at the time.

Q So he was competent to assess you as a resident?

A Yes.

Q Nothing said, okay. Was there anything other than what you described that bears on what his motives might have been?

A Not that I can remember at this time.

Q Are there any other reasons why the program should not have given full weight to his assessments, beside what you provided me already?

A Not that I can think of at this point.

Q You know, do you at this point have any better sense of what you want to do with Dr. Wallace, whether you want to put him on the list or not?

A I would put him on the list of faculty who I believe not acted in good faith.

Q In a general sense, I can understand that. I have reason to -- documentation. In terms of his -- we will get to again. In terms of his assessments of you as an evaluator, that is all I am focused on at this point.

A I would say yes.
Q What are the reasons you would put him on the list as far as his assessments of you as an evaluator? For example, I'm not even familiar with it, but I gather there must have been some time you worked with him?
A Um-hum.
Q So go ahead.
A Regarding his evaluations, I would have to actually see the documents to refresh my memory as to what he has written to me as far as feedback. I can remember some that were positive. There were many that were satisfactory.
Q The scale is 1 to 5 on various things. I'm looking at Exhibit B, if you want. It says here on the second page, explanation for score of 2 out of 5 for the patient care. I read that to say you have a 1 to 5 scale?
A I believe so.
Q 3 would be satisfactory. 4 and 5 are better than satisfactory. 1 and 2 are less than satisfactory, is that a fair summary of the evaluation system?
A Um-hum.

Q Yes?
A Yes, I believe so. I would say with I don't remember at this time whether Dr. Wallace ever provided me as an individual faculty person to resident with a negative written evaluation. He may have. I don't recall at this moment. I know there have been at least a few that were positive or satisfactory. My reasons for putting him on that list are based more upon his --
Q Handling of other people's evaluations, that is one example?
A I'm not sure what you mean by that.
Q His review of other people's evaluations with you, other circumstances of that ilk is what I'm getting at. Distinct from his one evaluations, his work with you?
A I would say that it would be based upon his behavior and actions towards me as an administrative supervisor, as a boss so to speak. In my assessment of his use of his position of power, to carry out other, potentially other agendas not of an educational nature. I would say that his verbal communications to me, regarding my

clinical work, that is clinical work that I did with him, was at times distorted, appeared to be influenced by his emotions. Also his use of or interpretation of evaluations or performance information that he would receive.

Q Can you give me any examples of when his verbal communications with you were distorted? I believe that was the word you used.

A I think that one example would be it was a situation of a patient that we had taken care of together. There was -- I can go into the detail of this if you need. There was essentially a small equipment malfunction that I noticed at the time it occurred. Documented it, followed up and saw the patient soon after the operation to insure he wasn't harmed by it. Wrote the appropriate incident report, including the follow-up with the patient.

But a few hours after that operation concluded, Dr. Wallace called me at home, essentially said you know I saw that, he meaning, I, he said he had seen that malfunction occur. Accused me of covering it up, or I was trying to hide it. That would be one example.

Q Can you give my any other examples where he communicated to you in a way that you considered to involve being distorted in terms of his view?
A I would say another example would be during that October, mid October meeting, in which a large portion of most of that meeting time was taken up by he accused me of misusing the text paging system at the hospital. Made an accusation I was using the text page system to defer work to other residents.
Q The distortion was what, the accusation itself?
A Yes.
Q Or something more specific?
A I would say the accusation itself. I would say the accusation itself was in his -- the conclusions that he reached regarding that about me. He clearly was having negative thoughts about me, based on this accusation.
Q Any other examples of him verbally expressing himself in a distorted way, expressing distortions?
A There were other circumstances in which I felt that he was either soliciting negative

information about me, I would speculate I would guess I would say that he was, or that he was taking certain events and interpreting them in a way that could be used against me.

Q The distortion in there, that is what I'm after. Give me some examples of him being distorted in what he was verbally communicating to you, other than the two you have given to me already?

A I think as another example, I don't recall the exact specifics, there was another incident in which there was some discussion about how quickly the on call team had responded to a request for -- it was a very early morning case. Dr. Wallace as the incoming coordinator of the day, would have been the incoming person to receive that information, that this case had just started or was ongoing as the day shift was coming on. I don't know this for a fact, typically what happened is the coordinator comes in, you get a report on what has been going on. If there was somebody had a complaint or concern, you would hear about it.

I think it was probably at some time at

a later date I was called in to meet with Dr. Wallace and Dr. Norcia regarding this case. It was presented to me as something that I was being criticized or blamed for. My feeling was that Dr. Wallace would have seen this as an opportunity to create a negative report about me. I felt he was compiling them.

Q That is a separate thing which we may get to, but is there a particular distortion or example that is in there you can give to me?

A Yes, I would say I don't know that I can tell you specifically at this time, kind of specifically what the distortion was. It was certainly --

Q You felt there was a distortion in there by him of what the factual circumstances were?

A What occurred, getting the patient to the OR that would ultimately allow him to blame me.

Q Are there other examples of his communicating distortions to you besides these three, the third one may be a category, the last one having to do with on-call response time issue, subject of the October meeting, arising at the October meeting, the first one having to do

with an equipment malfunction?
A I would say right at this moment, regarding communication I felt was distorted specifically, I'm not thinking of any right at this time. There may be.
Q If it comes up, we talked about that. What was your understanding -- did you have an understanding what his ulterior agenda was, besides fulfilling his responsibilities in managing the program and assessing you?
A I would say that there were other motivations. My experience in working with Dr. Wallace was that he would intermittently threaten me with termination.
Q If you could, it's up to you, what I would like to understand first is what you believe the motive was, then why. If there is an ulterior motive, what was it that you believe was motivating Dr. Wallace, besides filling his responsibilities?
A I would say I don't know what his motivation may have been on a personal level. I do know that in the events that specifically arose towards the end of 2008, then going forward to 2009, the timing of actions against me seemed

intended to maximize the personal harm and interfere with my -- most specifically to interfere with my maternity leave in that the events and actions, were they purely motivated by a concern for patient care or my education, I don't believe would have unfolded as they did.

Q Do you have any understanding why he wanted to cause you personal harm?

A I would say I don't have a specific knowledge of facts. I would be speculating.

Q How do you have a -- more specifically why he wanted to interfere with your maternity leave?

A I would again be speculating whether that was motivated by some prejudice on his part, or purely a desire to not disrupt his resident scheduling, I don't know.

Q You know I added Dr. Hayak to the list?

A Yes.

Q I wanted to make sure you consciously either included him or excluded him from the list we are now talking about. I don't know whether because it wasn't on the piece of paper you were looking at in front of you, you may have missed considering him. I wanted to make sure

he's considered. Is he someone you would put on the list of people we're now talking about or not?

A I would say no, I wouldn't put Dr. Hayak on that list.

Q I forgot to ask you a question about Dr. Norcia. When he discussed this response time matter you referred to in October, was that the first he ever discussed that with you?

A Yes, I believe so. In terms of --

Q He raised the issue with you earlier in the year at some point, before it arising again in October, or was October the first time?

A Not that I remember. I would say October was the first time it was mentioned.

Q I have to do a little legalese with you. A lot of times people will say I don't recall something because it could have happened, or might not have happened, they just don't recall. Other times they say I don't recall something, because that is their way of saying it didn't happen. Common nature. I need to know which that is. Are you saying that you can't recall it, it could have, or are you

saying that in your recollection there was no prior communication between you and Dr. Norcia concerning any matter of his concerns about response time?

A To the best of my memory, the first time that was ever mentioned to me was at the meeting in October.

Q So it could have happened earlier, you just don't recall one way or the other?

A Yes, but I think it's unlikely.

Q If you go back to the document for a moment. Turn to the next page, which is page 4. I'm going to go a little bit in backwards order. Let's update number 6. My understanding is that your employment -- start that again.

My understanding is you are no longer employed with Sheridan Health Corps?

A Yes.

Q That employment ended when?

A October 1, 2010.

Q Why did that employment end?

A It was the end of my contract. I had a one year contract. Primarily we wanted to come back to Cleveland.

Q It was your choice -- were you offered a

renewal of the contract for an additional year or years?
A I was. Then subsequently that -- I was, I declined. It subsequently became not an option for staffing reasons.
Q What do you mean?
A Had I wanted to stay, there came a point had I wanted to say, I wouldn't have been able to because they were fully staffed. They hired a replacement basically.
Q Were you offered a renewal for an additional period of time, a year or whatever you were offered, a renewal beyond October 1, 2010?
A Yes.
Q Was that in writing?
A No, I don't believe I ever got that in writing.
Q You turned it down for what reason or reasons?
A Our plan was to return to Cleveland. We already made arrangements to return here.
Q Why was it you decided to return to Cleveland, instead of staying in Maryland?
A There were a number of family reasons that were related to the kids; schools, their activities, their violin, things we really

couldn't reproduce where we were. I think that was the primary reason. Had we had those things where I was, I might have made more of an effort to stay at Sheridan. I think that my work there was -- I enjoyed working there. It was a good group. I think that my starting there was made more challenging and stressful by virtue of the additional review that was necessary when I started there. It created something that I needed to overcome as a new physician.

Q That was a factor in your deciding to leave?

A I think it affected my -- I think it had some affect on my level of satisfaction there.

Q In what way, how did it affect your level of satisfaction?

A In that it made it more difficult to establish myself, particularly with the surgeons. There is a certain confidence that one wants to elicit in the surgeons with whom one works, that goes a long way to facilitate patient care. It made it more -- it's hard for me to come up with specific examples. It made it more difficult to come in and establish myself as somebody that they would feel comfortable

with. Having to come in as a new physician, with a detailed review as my kind of start there.

Q Why did it make it more difficult?

A Because the communication from UH to my understanding sufficiently impugned my professionalism, and my reliability and competency. From what I was told the hospital was initially not even willing to look at my application. Were only willing to do so after some encouragement from the anesthesia group.

Q Understanding from whom, your understanding from whom about communications from UH?

A From Dr. Lawrence who is -- I don't remember his title exactly. I think vice president.

Q I know who he is.

A Also from Dr. Weiss, who was the anesthesiologist in charge of the group who was recruiting me.

Q Any other sources of communication about -- start that again. Any sources of your understanding about what was communicated by UH?

A Other sources?

Q Dr. Lawrence, Dr. Weiss, any others?

A Those were the 2 that were primarily involved. I don't recall at this time anyone else who would have had access to that information.

Q It's your understand that the information communicated by UH to -- that came to the knowledge of Dr. Lawrence and Dr. Weiss was then communicated to the surgeons?

A There are surgeons who sit on the committee, the credential committee. While these things are intended to be confidential, I don't know of a specific leak or sharing of information. Both Dr. Lawrence and Dr. Weiss, Dr. Weiss in particular, suggested to me, yes, this is intended to be confidential, this is not something that should be spread through the medical staff. You know, it's not a guarantee. People talk in the locker room. It's not a guarantee. Things get around is how it was described to me. That struck me as a realistic description.

Q Why is that, why did that strike you as a realistic description?

A Because I'm aware that people don't always honor confidentiality. People gossip.

Q Was there something in the conduct or communication of any physician or -- start that again. Is there anything in the conduct or communication of any physician with which you worked that they had an understanding what was communicated from UH?

A Would you restate that?

MR. BIXENSTINE: Go ahead, read it.

(Record read.)

A I would say yes.

Q Tell me about it. What was the conduct, what was the communication?

A There was an interaction that I had with one of the cardiothoracic surgeons who was one who kind of by history or reputation he would tend to, if there was something that he didn't like, he was apparently good friends with the CEO of the hospital. If there was something he didn't like, he would go over to her office and complain. This was something I had seen that would occur with various people. When he had a complaint about me, this would then come back around, passed along to Sheridan.

The feeling from Sheridan was that they had to in some ways expend so much political

capital just to get the credentials committee to look at my application, consider me for the medical staff, the moment they got -- there was no one complaint that was going to create much more of an issue. It wasn't leaving them with anymore leeway. So it created a more difficult situation both for Sheridan, and for me.

Q Are you testifying this cardiothoracic surgeon had some understanding what was communicated by UH about you?

A It was in response to that. You can blame this kind of creator of this flurry of concerns, asking Sheridan what is this about. In response to that, a number of other surgeons with whom I had been working, in fact were expressing a sense of -- they were supporting me and essentially saying this was -- saying that what occurred in the credentialing committee made me unreasonably vulnerable to any little concern or complaint that might -- they felt it was unfair. That I was essentially being made a target based on what had occurred during credentialing committee.

Q Let's get back then. We have a cardiothoracic surgeon. My question is, do you have reason to believe he had any understanding what was communicated by UH. You mentioned he made a complaint about you to the people at Sheridan eventually. My question is, did he have an understanding of what was communicated from UH about you, did this cardiothoracic surgeon?
A I would have to say -- this would be I guess it was hearsay, suggested to me by a second party.
Q That being who?
A Possibly Dr. DeMarco. I'm not absolutely certain of that.
Q Who else could it have been?
A I can't think of who else it may have been. I'm still not positive it was Dr. DeMarco. I don't remember at this time.
Q Was there anything that the cardiothoracic -- what is his name?
A Dr. Wehberg, W-E-H-B-E-R-G.
Q Did Dr. Wehberg say something that told you he knew what UH communicated about you?
A No.
Q Did he beyond complaining about something you

did, did he do anything else that raised the possibility that he knew about what UH communicated?

A Not that I can recall at this time.

Q How many complaints did he raise about you?

A Just the one.

Q Was he the only surgeon that ever raised a complaint about you at --

A As far as I know, yes.

Q -- Sheridan. Some individual who might be Dr. DeMarco said something to you, that led you to think that Dr. Wehberg knew about the communication from UH?

A Yes.

Q What did this person in your recollection say, whether Dr. DeMarco or someone else?

A The gist of that conversation was that there was a bit of a power struggle between particularly the cardiothoracic surgery group and Sheridan, which was a relatively new anesthesia group for the hospital.

The surgeon I was talking to, I don't recall which one it was, expressed the thought he felt Dr. Wehberg was in this context exerting influence for the sake of exerting

influence. That my coming in with this, essentially this mark on my record, made me a bit of a target. A way of attacking Sheridan. By being able to register that complaint, they could take back some control over the conduct of the cardiothoracic surgery service.

Q This physician that you can't recall who it is at this point, said to you he thought Dr. Wehberg was raising this complaint to take advantage of your vulnerability as you describe it?

A Yes.

Q This doctor was a surgeon? Who was this doctor that told this to you, an anesthesiologist?

A No, one of the surgeons.

Q So this surgeon you can't identify is someone you believe did know about the communications from UH, did know something about your what did you call it extended assessment process that was done with you? What is the term you used for that?

A Are you referring to the credential committee?

Q Yes, the more thorough credentialing that was done for you, is that what you are referring to?
A Yes.
Q This surgeon knew about the more thorough credential?
A Yes.
Q He told you he thought that is why Dr. Wehberg had raised this complaint?
A Yes.
Q Who is it you were saying told you that they thought this credentialing process made you vulnerable? Who said that to you? Was it the same doctor or some other doctor?
A The same doctor. I mentioned Dr. DeMarco, I do remember him commenting on that.
Q Dr. DeMarco is?
A A surgeon as well.
Q He knew about the extended credentialing process?
A Yes.
Q Is that the right term for it, extended credentialing process?
A It was --
Q More thorough credentialing processes?

A Yes.
Q Is it your testimony Dr. DeMarco knew what UH had communicated, or just that he knew about a more thorough credentialing process?
A It was my impression that he knew something of the content of what had been communicated.
Q Your impression?
A Yes.
Q That came from what?
A From comments he made about the committee, about what influence that might have on my standing at the hospital.
Q Those comments were what?
A I don't remember his words exactly.
Q I'm not after that. I'm after at least the substance or thrust of them that communicated to you he knew something about what UH communicated?
A I remember the gist of what he said was that he felt that what had been communicated to the committee seemed malicious. I don't know that he used that term.
Q He said something to you to the effect that said -- he said something to you to the effect that -- let me start that. He said something

to you that you understood to convey that he thought what UH wrote was malicious?
A Yes.
Q Do you have any sense of what he said to convey that?
A Not that I'm remembering specifically from what Dr. DeMarco said.
Q Start with him then, move on. There is somebody else we have to ask about. What about Dr. DeMarco? What is it you recall he said that conveyed to you that he thought UH communicated something that seemed malicious?
A He was a fairly senior surgeon at the hospital. His --
Q I'm asking what he said.
A I understand. His comments were coming from that perspective, that he felt that it was unfair to bring in a new physician with that kind of obstacle in their past to becoming integrated into the care team of the hospital. So by my commenting on him being a senior physician, meaning he had a perspective of several decades of working at this hospital, of seeing people's progress and work over the years. He felt that the transition

to private practice was an important phase. It shouldn't be interfered with in a way that seemed gratuitous to him.

Q In this question we have to abide by kind of a division of labor here. I'm happy to know about your impressions about the meaning of things and so on. I would like to get at what you best recall he said. Then we can talk about the context of it, so on. There is what he said, then surrounding context. I would like to get focused on what it is you recall Dr. DeMarco saying that conveyed to you he felt there was something seemingly malicious about what UH communicated. Let's focus on what he said.

A That would be again, I can't quote him exactly. That was his gist was that one has graduated successfully from a residency, they graduated, they means they have been deemed competent. That that should be communicated and the person should we mentored into practice.

Q That was his gist?

A Yes, his gist was he felt that what was communicated to the committee was communicated

negative things that did not serve any purpose in terms of the mission of the committee, which is to bring in physicians who are safe and competent. He felt that --

Q Again are you talking about what he said to you now?

A I am trying to give you the gist of it. I wish I could quote him quickly, that would be more succinct.

Q What were the substance of his words, can you do that?

A I remember him talking about physicians making the transition from residency to private practice. His view was this was a process that one, as a senior physician, one should be a mentor. That we should -- this was important to bring people into practice as they come out of training. Felt that what was communicated was -- appeared to him, after having worked with me for many months, it appeared him to be unnecessary, gratuitous interference was the gist of it. I don't know he actually used those words.

Q Do you have any sense of the words he used, other than your impression what they meant?

A That is the best I can do at this point.
Q What was it that, in your understanding, was communicated by UH that he was referring to from whatever source, what is your understanding of what was communicated?
A I would say my two primary sources would be --
Q We will get to the sources. My question was what do you understand was communicated that you have the issue with?
A What was described to me was that the committee received damaging information about me of sufficient severity to initially make the committee not even move forward reviewing my application. It was stated to me that the paperwork that was received from UH was in fact somewhat strange because the commentary or check box or assessment recorded there, as was said to me, would not be compatible with someone you just graduated from a residency. They were saying you have someone who graduated, has been deemed competent, at the same time, a piece of paper that one would not think reflects someone that graduated -- that one would graduate from a residency.
Q What we have so far is, it's been described to

you there was damaging information of sufficient severity to make this committee consider not credentialing you?

A Um-hum.

Q There was paperwork that had some check box or boxes recorded that were not compatible with someone who just graduated, that is what I have so far.

A Exactly.

Q Is there any other content to what you understand to have been communicated by UH other than that?

A I was told, I've not seen this document myself. I was told that the negative evaluation was fairly broad. It was ranging -- it included both issues of professionalism, competency, reliability. I don't know the exact, what the categories were. That it was a very broad condemnation is what I was led to believe.

Q We have damaging information of sufficient severity to make the committee consider not credentialing you, involving check boxes on records that were not compatible with somebody who just graduated. Negative communication

that was fairly broad.
A Yes.
Q Anything more you understand to be the content of what was communicated from UH, other than that?
A I believe that in that context, I'm not sure it was if Dr. Weiss, my have been Dr. Weiss, had a follow-up conversation with somebody at UH. I'm not sure whether that was Dr. Norcia or Dr. Nearman, to make a follow-up phone call.
Q Dr. Weiss did this?
A Fairly sure it was Dr. Weiss made a follow-up phone call to clarify the piece of paper he had just received. During which he told me there were similar opinions communicated. I don't know the specifics of that conversation.
Q So we have damaging information of sufficient severity to make the committee consider not credentialing you. It involved check boxes recorded that were not compatible with someone who had just graduated. Involved negative evidence that was fairly broad and involved a follow-up conversation in which oral communications were made of a similar nature?

A Um-hum.
Q Is that okay so far?
A I would say yes.
Q Is there anything more to what you understand what the communication may have been from UH than what we just discussed?
A Not that I can think of at this point.
Q The source of your understanding of the damaging information of sufficient severity to make the committee consider not credentialing came from who?
A Dr. Lawrence and Dr. Weiss.
Q The source concerning the paperwork check boxes?
A Dr. Weiss. I don't know if anybody else gave me information about that.
Q The source for the follow-up communication would have been Dr. Weiss as well?
A I believe so, yes.
Q Your testimony is the only surgeons that raised any complaints about you concerning your entire employment at Maryland was this one cardiothoracic surgeon, Dr. Wheatberg?
A Dr. Wehberg.
Q Excuse me. I didn't write it down very well.

A To my knowledge, yes.
Q What did you understand to have been the nature of the concern that he raised, or were you never told?
A I know what his concern was. He and I actually discussed it at some length the day following.
Q What was the nature of the concern?
A I think the very concrete concern regarded an I.V. tubing that wasn't connected, which was noted and corrected immediately. I think what that raised for him was I think he had concerns that there were a number of new anesthesiologists, that because it was a new group, they recruited several of us --
Q I'm not concerned about the rest of them. I'm interested in what was his concern he expressed to you about what you did or didn't do?
A What I'm trying to say is that the actual event that raised the issue --
Q Was nothing more than the connection of I.V. tubing?
A Yes. I would say that was a very circumscribed -- how can I -- it was not a

concern that was ongoing beyond that very specific context.

Q His only concern with what you did or didn't do involved an I.V. tubing that was not connected and was corrected immediately; do I have that right?

A Yes, his concern regarding the immediate -- those events that then provoked the other conversation.

Q I understand. That other conversation didn't involve him. That was other conversations you had with others?

A It involved him in the sense that he in general had concern about having a lot of new anesthesia providers, so that event with the I.V. tubing prompted him to complain about sort of general --

Q I understand that. I'm only concerned with what he communicated to you, about you. What did he communicate to you, about your conduct as an anesthesiologist, that he had a concern with? That is all I would like to know for this point in time. Can you tell me that?

A He informed me he had no other concerns about my practice.

Q The only concern he informed you about was that there was I.V. tubing that was not connected, you corrected immediately.
A Yes.
Q You corrected it before he even told you?
A I corrected it, then informed him that is what happened.
Q He didn't know about it until after you corrected it?
A Correct.
Q That was the only concern he ever expressed to you about your conduct as an anesthesiologist the entire time you were there?
A Yes.
Q The only concern any physician expressed about you during the entire time you worked in Maryland?
A Yes.
Q So are you aware of any surgeon who ever expressed any lack of confidence in your ability, at any time, to you?
MR. GORDILLO: Are you talking about Sheridan?
Q Sheridan, sorry.
A Not that I'm aware of, no.

Q Are you aware of any anesthesiologist working for Sheridan, others of your same staff, who ever expressed any lack of confidence in your abilities to you?
A No.
Q Are you aware of any anesthesiologist that ever expressed any lack of confidence in your abilities to someone else, besides you, you heard about through the back door?
A No.
Q Are you aware of any surgeon who expressed any lack of confidence in your ability to someone else, you heard through the back door?
A Not that I can -- no, no that I'm aware of.
MR. GORDILLO: Is this a place we can take a quick break?
MR. BIXENSTINE: Sure.
(Recess taken.)
Q Dr. Aronson, there was one little question I wanted to you ask about before I move along in the sequence we are doing. Do you remember this equipment malfunction matter you referred to with respect to Dr. Wallace?
A Yes.
Q What kind of equipment are we talking about?

A It was an endotracheal tube. There is a balloon that is deflated before the tube is removed.
Q The malfunction was what?
A The balloon didn't deflate properly.
MR. GORDILLO: Let's clarify, I think you said Dr. Wallace.
Q The issue was between Dr. Aronson and Dr. Wallace, but if I referred to you as Dr. Wallace, I apologize.
A I don't think you did. It was Dr. Wallace that was involved in that particular interaction.
MR. GORDILLO: Okay.
Q Referring to a matter you raised with respect to Dr. Wallace and involved an equipment malfunction, you are saying that involved an endotracheal balloon?
A Yes.
Q What is the time frame for that, as best you can recall?
A You mean when that occurred?
Q Correct, as best you can put it in a time frame?
A I believe it was -- I believe it was sometime

during 2009.
Q That's close enough. We were on page 4 of the interrogatories. Referring to Sheridan. You are currently employed by whom?
A I'm currently employed by a company called Comp Health.
Q Comp Health?
A Yes.
Q Located where? Location of your employment?
A I'm currently working at Easton Hospital in Easton, Pennsylvania.
Q Easton Hospital?
A Yes.
Q How long have you been employed by Comp Health?
A Since November 1st.
Q You've been employed that entire time at Easton Hospital?
A Yes.
Q You have sought employment at various places and we will get to that in a minute I think. Let's go back to this.
Do you have any understanding of any communications from UH bearing on your employment at Comp Health analogous to the

communications we spoke to earlier that bore on your employment in Maryland?

A There were communications. There was receiving of verification from the residency is going to be required for credentialing with almost any employer or hospital.

Q Do you know anything about what those communications were?

A I have incomplete knowledge of what was communicated to Easton Hospital.

Q What do you know was communicated? Obviously I can't ask for what you don't know. What do you know was communicated?

A The fact of the training extension was communicated. I believe there was some reference to performance concerns and possible medication use. I'm inferring that from comments that were raised by their credentialing committee.

Q So what comments were raised -- let me get this straight. No one has told you anything about what UH communicated to Comp Health; do I have that right?

A I know that Comp Health -- I'm assuming Comp Health has documentation from UH.

Q I understand they probably do.
A I don't know, I have not heard anything about what it says.
Q You don't know anything about what was communicated in writing, you're not aware of anything communicated orally as well?
A To Comp Health?
Q To Comp Health.
A Yes, I didn't have a discussion about it with anybody there.
Q You were asked questions by the credentialing committee, from which you drew an inference that certain information was provided by UH?
A At Easton Hospital.
Q What questions were you asked about the extension, you mentioned that as one, what questions were you asked?
A That committee primarily wanted to know if I had anything to add to what documentation they already had.
Q Concerning the extension now, that is what we're focused on?
A Yes --
Q With respect to the extension, what did they ask you, if anything, with regard in terms of

your being considered for employment at Comp Health?

A This wouldn't have been in relation to Comp Health, if I can explain.

Q Yes.

A Comp Health functions as a staffing agency. They do very thorough credentialing themselves. I was already employed by Comp Health to provide services at Easton Hospital, so I began at Easton Hospital on November 1st with I believe they termed it locum status or temporary status. After I had been working there for a month, the director there was interested in me coming on as a permanent staff member, so my credentials were submitted to the credentials committee to become a permanent staff there, as opposed to temporary.

Q That is what you are now, permanent staff?

A Yes, I believe it is to be finalized this week. I'm still in a locums status on paper, yes.

Q A credentialing committee in connection with permanent status at Comp Health asked you questions about the extension, correct?

A The committee was from Easton Hospital.
Q Easton Hospital committee asked you questions about the extension of your residency?
A Yes, the extension.
Q Professional concerns and medical use, I wanted to start with extension first. On the extension question what did they ask you?
A They asked me if I had anything to add.
Q To add?
A To add, yes.
Q They then must have told you what they had already, how would you know if you had anything to add unless they told you what they had?
A They in fact didn't tell me in detail what they had.
Q What did they tell you?
A They had -- what did they tell me. They I believe said there was -- I have to say they didn't tell me in detail. There was some comment about there was a performance concern.
Q I know you mentioned performance, and medical issues. I'm interested in the reasons -- what they asked you about concerning the extension of your residency. I'll get to the

performance concerns and medical use.
A I can't say they asked me something specifically about the extension, the extension specifically.
Q What did they tell you about what they knew of the extension? They asked you if you had anything to add. What did they tell you they knew already concerning your extension?
A The fact of an extension is in and of itself a flag for some sort of irregularity or issue.
Q What did they tell you about the extension beyond the fact that you had one?
A Nothing that I'm aware of.
Q They asked you if you had anything to add concerning the extension? What did you say when they asked you what did you have to add, what did you say about the extension?
A I'm having difficulty with the question. They were not approaching me specifically about the extension. Their question wasn't specifically about the extension. It was more --
Q They asked you a question about whether you had anything to add, correct, you told me that?
A Yes. Although perhaps that would make more

sense if I gave that to you in context.
Q I just want to know what you responded when they asked you whether you had anything to add, whatever the context is, I'll get it out of your response. What did you respond to them when they asked if you had anything to add, what did you say?
A I told them that in essence my residency was extended. That I had an ongoing dispute with my residency program. The strength of my application to their medical staff was based on my work references, my Board certification. That they should consider it based on those facts.
Q Did you give them any explanation for the extension? If you didn't, you didn't, but did you?
A I don't recall whether I attempted to explain or describe any details then.
Q You may have, you may not have, you can't recall?
A I don't recall exactly whether I attempted to describe that to them or not.
Q Did they explain to you what performance concerns they -- did they ask you to say

anything related to performance concerns? Were you asked to say anything relating to performance concerns?

A No.

Q Were you asked to say anything regarding medicine use, is that the Topamax?

A Again, I didn't see those documents, but no, they did not ask me anything about medication.

Q Did you communicate any information to the credentialing committee relating to your Easton employment, relating to your use of Topamax?

A I don't think so, no. I don't recall saying anything about that.

Q You supplied references to Comp Health. Did any of the references come from personnel employed by UH?

A I don't think so.

Q Did any of the references come from personnel relating to your employment in Maryland?

A Yes.

Q Those references were from whom?

A These were the references provided to Comp Health?

Q Correct, thank you.

A There is a number of people that over the past months have provided references for me from Peninsula. I'm not certain which of those provided references to Comp Health.
Q Let me ask you generically. That's okay. Who do you recall providing references for you from Sheridan?
A That would be Dr. Gloglover, Dr. Daugherty, Dr. Franks, Harris, Nagy I believe, Dr. Onwere, O-N-W-E-R-E, Dr. Shaw, Dr. DeMarco, Dr. Dudas, Dr. Todd, Dr. Mah.
Q Mah?
A M-A-H. I think that is a complete list. I'm fairly sure I'm remembering all the names from Sheridan.
Q Which of those are anesthesiologists?
A All but Dr. DeMarco, Dr. Dudas and Dr. Todd.
Q DeMarco is what?
A He is a urologist.
Q Urologist. Dudas?
A General surgery. Dr. Todd is cardiothoracic.
Q Between the time that you were employed at Sheridan, and you obtained your employment, current employment with Easton Hospital, you applied for employment at Hammet Medical

Center, correct?
A Yes.
Q Was there any other locations you applied for employment between your Maryland employment and your Easton Hospital employment, besides at Hammet Medical Center?
A Perhaps you could specify what you mean by applied?
Q What is your uncertainty? It seems fairly straightforward to me. I don't work in your profession. What is the uncertainty?
A There were several practices that I either interviewed with or spoke to, but didn't go any further in terms of contract negotiations, that kind of thing.
Q Let start with those. That is a good distinction. Who did you interview or speak to, in terms of seeking employment between the time you were employed at Sheridan in Maryland and your current employment at Easton?
A I spoke with the practice at Elyria Hospital, University of Toledo, Affinity in Massillon. There is a group in Stuebenville I spoke with, Bay City, Michigan, Springfield, Ohio, Youngstown, Ohio. I believe those are all the

practices.
Q Which of those applications went to the point of someone soliciting information from UH?
A Bay City, Springfield, Hammet you already mentioned. Did I say Michigan, Bay City?
Q Bay City, Springfield, and Hammet. Those are the three you mentioned.
A Youngstown I'm not positive they have solicited references. I'm not sure about that. The other ones I'm more certain they started, engaged in that process.
Q Are you aware of any content of the communication from UH to any of those institutions you mentioned that solicited information from UH?
A No, I've not been privy to the content.
Q Did you communicate any information concerning the extension of your residency to any of the various facilities that you mentioned when they sought information from UH or not?
A Yes.
Q To whom did you communicate information concerning that extension?
A That would be Bay City, Springfield, Hammet. Those are the only ones I'm recalling at this

time.
Q Did you communicate the same information to each of them, concerning the extension now?
A Approximately, yes. I don't remember the exact wording that I used in each instance.
Q What was the information you communicated concerning the extension of these institutions?
A I communicated to them that I had an ongoing dispute with my residency. That it was likely there would be negative information communicated to them when they requested verification of my training. That I would be available to address any concerns that might arise when they received that paperwork.
Q Anything further that you communicated concerning your extension to those three institutions besides what you just told me?
A That was the gist of it. I'm not recalling any other specific information that I communicated to them.
Q So none of them asked you to address anything as a follow-up to what you told them when you said you were available to address things, no one followed up to ask you to address

anything; is that right?
A No, that is not right.
Q There has been follow-up from one or more of those institutions to address things as a follow-up to what you told them about the extension?
A Yes.
Q Which institutions asked you for follow-up?
A Hammet Medical Center. With Springfield and Bay City, when the issue or when I informed them verbally they could likely anticipate receiving something negative from UH, they asked me to provide them with that same statement in writing, so they could attach it to my application.

With Hammet Medical Center, they reviewed my application, decided to defer a decision for a month, pending my availability to come and be interviewed by the committee.
Q You submitted in writing the substance of what you communicated to me was your input to these three institutions relating to the extension of your residency, you put that in writing?
A Yes.
Q In a letter, three letters?

A Yes.
Q How many letters, how many institutions asked for it in writing?
A Those three I mentioned, Bay City, Springfield, Hammet. Easton also requested a letter to accompany the application.
Q So there are four letters then you prepared?
A Yes, what I recall at this point, yes.
Q All with the same content?
A I would say not precisely, but with that same message.
Q One page in length?
A I don't remember.
Q Did Hammet -- did you provide the follow-up information to Hammet?
A I was -- I gave them the letter. I had a conversation with the chairman of the credentials committee. We were scheduled to meet the following month. I was going to come in in person, so that I could meet with the credentials committee, discuss it, much as what happened at Peninsula, very similar scenario.
Q You interviewed with whom?
MR. GORDILLO: Objection, form.

Q I'm sorry, I could have sworn you said you had an interview with someone?
A I was scheduled.
Q Scheduled for an interview, but you never had it?
A No.
Q Again, first question was I thought maybe a yes or no type question. Did you provide any follow-up information to Hammet?
A Um-hum, yes, I gave them a letter and had a telephone conversation with the credentials committee.
Q You had a telephone conversation?
A Yes, in anticipation of arranging this interview.
Q The telephone conversation was with who?
A I believe his name was Dr. Scully I think was his name.
Q One person on the line, just you and he?
A Yes.
Q In that telephone conversation, did you communicate anything concerning the circumstances of your extension of residency at UH?
A I don't recall that I discussed with him

specifics of events at UH. Our discussion centered more around the fact that I was engaged in a dispute with UH. That if there was a concern about my performance, that I was providing him with references of people who worked with me in order to give him some reassurance.

Q So you never told him in this conversation anything concerning your employment as a resident at UH besides the fact you had a dispute with them?

A As I said, I don't recall discussing with him the specifics of how that dispute evolved.

Q That may be on topic, could by innumerable. I'm interested in whether or not you had any conversation with this Dr. Scully, concerning your residency at UH, besides that you had a dispute with them?

A I don't recall that I did.

Q In the conversation with Dr. Scully, there was no information you provided him concerning your residency at UH, other than the fact you had a dispute with them, concerning that residency, dispute with UH, fair enough?

A So far as I remember, yes.

Q Have you ever told anyone outside of UH concerning -- and outside of your family, outside of counsel, put those aside, put counsel aside, Miss Ayers aside, your kids aside, UH personnel aside. Have you ever communicated to anyone else anything concerning the extension of your residency?
A I believe that I discussed it with Dr. Weiss.
Q Dr. Longfellow?
A I'd forgotten about him. I communicated some information to Dr. Longfellow, that was an attempt to -- yes.
Q Is he in the list, or not at this point?
A Yes, he was on the list.
Q You communicated information concerning the extension of your residency to Dr. Longfellow and Dr. Weiss, any others?
A Regarding the extension.
Q Is that too technical? I'll make it broader. Did you communicate anything to anyone other that counsel, your family, UH personnel, concerning the circumstances of your residency at UH?
A Well, regarding the extension and circumstances of the extension itself, and the

circumstances of my residency, I would be required to provide information about that.

Q To whom?

A Any licensing agency.

Q And you did?

A Yes.

Q To whom?

A That would be the Maryland Medical Board, the Michigan Medical Board, the Federation Credentials Verification Service, which is part of the Federation of State Medical Boards. I would -- I believe that when I credentialed with Comp Health for example I'm fairly sure I had to make some statement about that. Although I'm not positive. You would think it would be in their paperwork somewhere. I would have discussed it with the physician who was recruiting me in Springfield. The physician recruiting me in Bay City. The physicians recruiting me from Hammet, because it's a fact that requires explanation.

Q What is, the circumstances of your extension?

A The extension in and of itself.

Q The extension in and of itself, that is our

topic, good enough.
A So there well may be others.
Q Who at Springfield?
A The physician who was recruiting me there was Dr. Mishra.
Q Who at Hammet?
A Mike Simon.
Q Bay City?
A That would be Dr. Chapetta.
Q Chiapetta?
A Chapetta. At Easton, Dr. Wilson.
Q Did you say the same thing to everyone in substance?
A I guess could you perhaps clarify that?
Q Which part?
A To everyone?
Q Correct. Dr. Weiss, Dr. Longfellow, Dr. Mishra, Dr. Simon, Dr. Chapetta, Dr. Wilson, the Maryland Medical Board, the Michigan Medical Board, the Federal Credentials Verification Service and Comp Health, if you happen to have written them?
A I would say no. It wasn't exactly the same to all of those.
Q In substance, difference in substance? Did

you communicate concerning the extension in and of itself in writing to the Maryland Medical Board, the Michigan Medical Board, Federal Credentials Verification Service and Comp Health, if you did it, would that have been in writing?

A I believe, yes.

Q You kept copies of that?

A Not in all circumstances.

Q Why not?

A For example with the Maryland licensing process, when I was in the process of obtaining my Maryland license, I had to write a statement to the company -- it was a form -- I don't remember exactly. A form or something I had to write. I kept a copy of it until the license was approved. I don't think I retained a copy of what I wrote. I may have. I don't know that I made a point of doing that. Once the license went through, it was not --

Q What did you say to -- what do you recall saying in any letter concerning the extension in and of itself, residency extension? Pick the first letter you can recall, tell me what

you recall saying in it.
A With the Maryland Medical Board, I chose to frame it as a medical problem because I felt that would be the least damaging to my professional standing.
Q How did you do that, what did you say, what did you write?
A To the best of my memory I said in essence, I'm not quoting, that I had a transient medical issue that caused me to lose some training time, and graduation was delayed. That it was no longer an issue.
Q Did you say something different than that in substance either in writing or orally to anyone else of the group of individuals, I can list them for you again if you need me to?
A Yes. I would say that my description changed at later dates.
Q What do you recall saying at a later date that was different and to whom?
A At a later time, I communicated that I felt that the extension of my -- I'm not sure I said that. I communicated that my residency would likely write negative things about me as I mentioned before. In essence that there was

a training extension that I didn't feel was a valid one, was still an issue under active dispute.

Q Who did you write that to, or say that to?

A Dr. Mishra, Springfield Hospital, Bay City, maybe Dr. Chapetta, Easton, Dr. Wilson, Hammet, Dr. Simon. Again possibly Youngstown. I'm not certain about that, how far along in the process I got with them.

Q The Michigan Medical Board and the Federal Credentialing Verification Service, what did you say to them concerning the extension?

A I should correct that with Michigan. I don't believe that they needed any information. They just needed verification of all my other licenses. The Michigan Medical Board I don't think needed a residency verification. I would take that off the list.

The Federal Verification when I addressed this question with them, I would like to say year, year-and-a-half ago, I don't remember exactly when, there was a point at which I provided them with the medical explanation essentially as I did with Maryland I think. I'm pretty sure that is how I

described it to them. I believe it was a while ago, I believe.

Q Was the medical explanation an honest explanation even if you disputed the need for the extension?

A I think it was at the time. Those communications were really right in the midst of when I was still in residency, attempting to negotiate this somewhat rocky professional stretch. It was an honest attempt to explain what was occurring. It was at the time I was attempting to keep an open mind about why this was occurring. I think that it was. Yes, I would say that it was.

Q An honest explanation?

A It was an honest explanation in a situation that was somewhat in flux.

Q Was it a truthful explanation, even if you disputed the need for the extension?

A I would say it was truthful in the sense that the medical issue may well have just been fatigue. I don't know that -- no, I don't think it was attributable to the medication, no.

Q You don't think what was attributable to the

medication?
A I'll say that I dispute whether there was a significant performance problem, but --
Q I understand you dispute the need for the extension. My question is, were you being truthful when you said the extension was due to a transient medical issue?
A I would say no, I don't think the extension was due to a transient medical issue. I think that there may have been a transient medical issue that drew the attention of my supervisor, which subsequently resulted in the extension.
Q Are you saying that when you told the Maryland Medical Board that this extension was due to a transient medical issue that caused you to miss training time, there are no remaining issues, you were not being truthful; do I understand that right?
A No, I still think that is an accurate --
Q I didn't say accurate. I said truthful.
A Yes, I believe I was being truthful, yes.
Q Were you being truthful when you said the extension was due to a transient medical issue, even if you disputed the need for the

extension?
A No, I still don't think that was accurate.
Q You were not being truthful?
A No, I'm not saying that.
Q You are either truthful or not, aren't you? Is there somewhere in between?
MR. GORDILLO: Objection.
A I don't agree with your rephrasing of the statement.
Q Which statement?
A That a transient medical issue caused the extension.
Q What did you tell the Maryland Medical Board, let's make sure we get that back in our frame of mind. We can go get it out of the record, either way?
A I believe, might be -- I'd be happy to see it if I have it there --
Q What did you tell the Maryland Medical Board?
A I indicated that there was a transient medical issue that caused me to lose some training time, therefore graduation was delayed.
Q Was that truthful?
A Yes. Which is I think slightly different from what you then subsequently said.

Q In what respect is that different?
A As I've said, I feel there may have been a transient issue that gave my supervisors opportunity to take an adverse action against me.
Q When you refer to a transient medical issue that caused you to lose training time, what training time are you referring to that you lost?
A The six months they took credit away for.
Q I wanted to make sure we're on the same page here. All right. I want to ask you now about the fitness for duty evaluation.
A Um-hum.
Q That is my topic. You were taken off work for what day for purposes of that, or date, do you remember?
A Not precisely, but it was a day or two before Thanksgiving I believe.
Q How soon after your meeting with Dr. Norcia and Dr. Wallace were you taken off duty for purposes of the fitness for duty evaluation, was it the day after?
A I believe the following day.
Q How soon after that was the fitness for duty

testing completed, December 4th?
A That sounds correct to me, if that is the date you have there.
Q It's not a test. I'm seeing how quickly we can go. I'll bring out documents if you need it. You couldn't guess. If you have uncertainty, we will deal with it. It's not a test here.
Was there any delay in getting the EAP fitness for duty process going between the 25th I believe when you were taken off duty and the 4th when it was completed, any delay --
MR. GORDILLO: Objection, foundation.
Q -- that you are aware of?
A No, I don't think there was a delay. Maybe it took a couple of days. I think that seemed a reasonable time frame.
Q You had a final visit with the evaluator on December 9th; is that right?
A Sounds roughly correct, yeah. The following week.
Q Did you have any further communications with EAP representatives concerning the fitness for

duty test between the 9th and when you returned to work?
A Yes.
Q What do you recall of those communications?
A I recall -- you asked an EAP individual, right?
Q I don't want to be technical here. Was the fitness for duty test conducted by EAP representatives or people retained by EAP, not part of EAP, I don't want to get caught in a thing here, whatever you need to tell me.
There was a process -- let's start this again. This process of getting a fitness for duty was conducted through the EAP program, correct?
A Correct.
Q So what I'm interested in is whether you had any communications concerning the fitness for duty testing with EAP representatives, or with the people who did the testing if they were not part of the EAP program, between the 9th of December, your last meeting with the evaluator, and when you returned to work later in December?
A Yes.

Q Tell me what you recall. First of all, how many communications do you recall having? Let's get that out first, the number, we will go each one?
A I communicated with the EAP nurse, the coordinator. I'm not sure her title. I communicated with Will Rabello.
Q He's part of the EAP program?
A No, he's the GME manager.
Q We will get to that. My question is focused on your communications with people who are within the EAP program itself, or involved in fitness for duty testing itself.
A That would be just Jill Fulton-Royer.
Q You recall conversations, at least one, with Jill Fulton-Royer between December 9th, your final visit with the evaluator and when you returned to work later in December?
A Yes, e-mail and I believe a telephone conversation as well.
Q What do you recall of the -- one telephone conversation, more than one?
A I don't remember.
Q As best you can recall of your telephone conversation or conversations, whichever it

was with Miss Fulton-Royer, what do you recall talking to her about? Again between the 9th and when you returned to work later in December?

A My agenda was to find out when I was going to return to work.

Q I'm sure you had that agenda. I am interested in what you communicated with Miss Fulton-Royer?

A I communicated to her that I met with the psychologist. He had at least verbally to me cleared me with no restrictions. I wanted to know when that would be officially communicated so I could return to work. She said to me that she had spoken with Dr. Wallace. That she didn't really see what the rush was to get me back to work because Dr. Wallace already told her I wasn't going to be graduating anyway.

Q Go ahead.

A That they had not yet received the written report, or they had not gotten -- I don't remember exactly. There was a paperwork thing that was pending.

Q You understood from Miss Fulton-Royer you

couldn't be released until this paperwork was completed?

MR. GORDILLO: Objection.

A Yes. That the neuropsychologist's findings or his report had to be reviewed by the relevant people, signed off before I could be assigned.

Q That happened on the afternoon of the 15th when the written report was finally, or official clearance was provided by the EAP to the residency program.

A I didn't have personal knowledge of that, it being the 15th. Yes, that sounds correct. I believe I was contacted on the 16th, informed on the 16th, perhaps it happened on the 15th.

Q Okay. Your best recollection was it was the afternoon of the 15th when EAP released you to return to work?

A I don't recall exactly. Yes, I believe it was somewhere in there.

Q Then by the next evening, the 16th, there was a plan for putting you back to work in place; is that right?

A My memory is the afternoon, sometime in the afternoon of the 16th was when I got a response, that things had been received, that

I would be going back to work. That sounds correct to me. Again, I would have to see my e-mail, those things, to confirm that.

Q As I say it is not a test. One document I am going to show you I have to get. This one I can.

(Defendant Exhibit C marked for identification.)

Q I'm handing you what is marked as Deposition Exhibit C. If you turn, we're going to go over this in a little more detail. The document itself. I wanted to focus on the question about returning to work first. I want to point your attention to paragraph six.

A Um-hum.

Q Are you comfortable based on review of paragraph six the testing was completed the 4th, your final visit with the evaluator was the 9th, and that a plan for returning you to work was provided on the evening of the 16th?

A Yes, I would say that looks --

Q As far as time off that was counted, I know you have certain rules about how much time you can take over one year, three years, I've forgotten which. In terms of that metric, the

time off are you allowed to take during your residency, that time off then stopped on the 16th, from that point on you were back officially within the residency?

A I'm not positive of the exact dates. I want to say I went back on the 18th. I'm not sure if there is a weekend in there.

Q You are right. We could check that out.

A It would have stopped the day I actually went back to work.

Q How do you know that?

A Because I didn't work the 16th.

Q There are plenty of days during your residency you don't work, that are not counted against you. You don't work seven days a week during your residency, correct? Sometimes. The point is, you may take days off at various times during your residency because you're not scheduled for that day?

A Correct.

Q You are still part of the residency. I'm asking you whether it's fair to say as far as the time counted against that 60 days, three years restraint you had as a resident, whether that time stopped being counted against that,

days stopped being counted against that at the end of the day on the 16th, even if you didn't work the 17th?

A No, I would have to stay it stopped the day I go back to work. Might have been there was a weekend, I don't know. I'm not back at work until I'm back at work. I don't think there were any subsequent days, but I'm not positive.

Q Was there availability to work on the 17th you wanted, you couldn't get?

A I don't remember. I would have to look at a calendar.

MR. BIXENSTINE: Let's take a break.

(Recess taken.)

Q I'm showing you a calendar here. I believe that the 16th was a Tuesday. Do you need my help with where to find it? December 2008.

A Are you saying it's the 16th?

Q I believe the 16th of December 2008 was a Tuesday?

A So if I'm reading this calendar correctly, that would be correct. I went back to work --

Q On Thursday, the 18th.

A So the 17th, that is when the clock stopped,

when the days off --

Q You know that from adding up all the days you had left, calculation of what you had going into the next year, you know the 17th was actually counted as a day off for the purpose of the ACGME restraint, you know that?

A That was my understanding at the time. If I didn't work, it would have been a day off.

Q Was there anything that anyone could have done to make that processing faster, the one that went from the 25th of November through the return to work on the 18th?

MR. GORDILLO: Objection, foundation.

Q That you are aware of, anything that could have been done?

A My opinion is that there could have been more of an effort to communicate with the psychologist, obtain the report, sign off on it.

Q Am I correct in my understanding that as the process worked it was not within the -- that the residency program was not actually entitled to communicate with anyone within the EAP or the assessing psychiatrist about this?

MR. GORDILLO: Objection, foundation.

A That's correct.

Q Are you saying that the EAP people should have communicated to get that written result out faster, is that what you are saying?

A I believe the residency program could have communicated with EAP, encouraged them to speed the process.

Q In what way could the process have been sped up?

A By obtaining the information from the psychologist.

Q The written statement you mean?

A Whatever information they needed to sign off on, get me back to work.

Q Was it your understanding that it was a written statement from this psychologist that the EAP needed to release you?

A My understanding at that time was that that is what they were waiting for, or that is what was needed.

Q The written statement was what was needed?

A Yes.

Q By the EAP program, in order to issue the

release?
A I don't know their exact procedures.
Q So you are critical of the residency program for not pressuring the EAP to get the release to them faster?
A Yes, that would be a criticism, yes.
Q Did you mention you had one conversation with Jill Fulton-Royer, verbally. You had e-mails with her between the 9th and the time you returned to work?
A I think I did. Again I don't have my copy of my e-mails in front of me. I believe I either e-mailed her directly or she was copied on e-mails to other involved individuals.
Q What steps did you take to pressure the EAP to get its release out faster?
A Aside from my telephone conversation --
Q Right.
A -- with Jill. I think, I'm not positive, I would have to see them, I believe that as I was making -- there were several e-mail communications expressing the similar concerns to Dr. Norcia and to Will Rabello. I believe Jill was also copied on at least some, if not all of those e-mails. In a sense I was

including her in that request to facilitate the process.

Q If it's the EAP that has to release you, why weren't you sending the e-mails to their attention directly, as opposed to copying them on e-mails to the residency program?

A I may have also e-mailed her directly, although I'm not positive. I would have to say that my rational I think, or my thinking at the time, was that the EAP was intending to act as a liaison. It's not going to be particularly -- they are intended to be a neutral party. I certainly was very clear with Jill. I don't remember the exact method of my communicating with her. It was clearly communicated to her, my sense of urgency.

Q How, not on the phone?

A Largely in the telephone conversation.

Q Okay. We went over that.

A I felt it was also going to be important to engage the residency program in helping to move things along.

Q What did you -- I understand. You believe the residency program could put pressure on the EAP to get the report out?

A Yes.
Q Your understanding was that the residency program, Dr. Nearman, Dr. Norcia, Dr. Wallace did not put any pressure on the EAP at all, that is your understanding?
A Not to my knowledge.
Q You think that was from some inappropriate motive that they didn't do that?
A Yes.
Q The motive was?
A I think the two that immediately come to mind is my upcoming leave. That this was going to directly interfere with it. And I felt that Dr. Wallace at least wanted to cause me professional harm.
Q How was the timing of your return to work going to interfere with your leave?
A The simple answer is that every day of that involuntary leave was consuming vacation days that I had saved specifically for my maternity leave. I had saved those days so that I could take a maternity leave, without going beyond the maximum number of days that were allowed to be away from training. Of those days that I had saved up, for every day that I was out

on involuntary leave, that number of days available to me were diminished.

Q You mean you weren't going to be able to take this leave? You mean that if you stayed out any longer, you could not -- you would be -- UH would withdraw your entitlement to take FMLA leave, is that what you are saying?

A It would create a penalty to me to take the leave.

Q The penalty would be what now?

A I would have to make up those days.

Q To make them up. You would have January and February, assuming you graduated in the end of February, to make those days up; is that right?

A No, I would have to extend my training beyond the end of February to make those days up.

Q Who is it that told you that?

A I guess that would the American Board of Anesthesiology.

Q You checked with them?

A Yes, those are published rules.

Q The published rules don't allow you to work extra days in January or February?

A That would be possible, but would generate a

hardship in terms of working weekends and nights with a baby at home. The hardship that should not have been created.

(Defendant Exhibit D marked for identification.)

Q I've handed you what is marked as Deposition Exhibit D. Have you ever seen this before?

A Yes.

Q This was an assessment provided to Sheridan by Dr. Norcia on your behalf in September of '08?

A That's correct.

Q Dated September 2, '08, is that your understanding when it was actually prepared?

A Yes, that's my belief.

Q Do you have -- are you aware of any other assessments of this nature that Dr. Norcia provided on your behalf between then and the following calendar year?

A I don't believe I used him as an individual reference.

Q The answer is you are not aware of any between, assessments Dr. Norcia provided on your behalf between September 2nd and sometime in the following calendar year?

A Not outside of those he would have provided as

program director.
Q None on your behalf personally is what you are saying?
A Not that I remember, no.
Q You mentioned something about working too many hours at some point or other?
A Yes.
Q That was when? I didn't get to ask you about the specific time frame for this.
A The details of the dates I believe we included in one of the documents we previously submitted. I think the dates in question are in October primarily.
Q How many extra days could you work in October, beyond the maximum permitted on the ACGME rules?
A I would have to refer to what I previously submitted.
Q You weren't over by much, were you?
A How would you define over?
Q Over the ACGME limit, you weren't over by much?
A I guess I'm not sure if I understand what you are saying.
Q It was a very small amount of time you went

beyond the ACGME limit in October; isn't that right?

A No, I wouldn't agree with that.

Q A substantial amount of time?

A I guess you would have to define what you mean by not much and substantial.

Q In your mind, your understanding of substantial, was it a substantial amount of time in your understanding of the term?

A Yes, in my opinion that was a substantial amount of time.

Q How about September of '08, did you have overage in that month?

A I don't remember exactly what -- when we wrote it up for the documents I was going through my calendar, counting. I believe there were some excessive hours in September. I'm not -- I can't remember the specifics without seeing what I wrote out.

MR. BIXENSTINE: Off the record.

(Discussion had off the record.)

(Defendant Exhibit E marked for identification.)

Q Handing you what has been marked as Deposition Exhibit E, which I understand to be the

complaint. If you turn to page 4, I think I understand where the information is provided.

A Yes.

Q So, is paragraph 28 then a truthful statement of the number of hours you worked in the month of October?

A Yes, to the best of my knowledge.

Q How far does that exceed the ACGME maximum for the month?

A An 80 hours per week limit, average over four weeks would be 320.

Q Correct. So it certainly would be fair to say that even if you took and added this was October -- which is a little under half a week, if you added on a little under a half a week in there. It's 80 per week, maximum?

A Um-hum.

Q So say 35 for three days out of seven, a round number, you come up to 355, 320 plus 35?

A I'm not sure I understand.

Q The month of October has 31 days, right?

A Correct.

Q Four weeks is 28 days. That leaves three more days in the next week, three-sevenths of a week. So you have 80 times 4 is 320 hours for

four weeks. Then three-sevenths of another 80, correct? For the three days beyond four weeks that are in the month of October?

A Go on.

Q Three-sevenths of 80 is a little over 33. Let's call it 33, correct? Three-sevenths of 80 is a little over 33?

A Probably need to confirm that.

Q You divide 7 into to, you get 11, to 77. You get 11 pieces. 11 for each day and three days, 33. Fair enough?

MR. GORDILLO: Objection. You are asking her to confirm your math?

MR. BIXENSTINE: Sure, you've got a problem with that?

A That would be a little less than half of 80.

Q I said 33, reasonable?

A I would say that sounds reasonable.

Q You add 33 to 320, you come up with 353?

A Yes.

Q You worked 362?

A Um-hum.

Q So you are saying you worked nine hours too much, correct, approximately nine hours; is that right?

A Yes.
Q Would you call that a substantial breach of the rules, nine hours?
A Yes, I feel in effect it was.
Q What was the overage for -- I don't know that there is enough in here to refer to an overage for September. Maybe there is. Your best recollection you had an overage for September as well?
A Yes, it's in the complaint.
(Defendant Exhibit F marked for identification.)
Q I've handed you what has been marked as Deposition Exhibit F. Do you recognize this document?
A Yes.
Q Your signature?
A Yes.
Q Am I correct from this document that you actually had a duty to notify them if your hours violated the limits, notify the residency program?
MR. GORDILLO: Object to the form of the question.
Q Did you have a duty to notify the residency

program if your hours exceed the ACGME limits?
A We were required to provide this data, yes.
Q You were also required to contact the program director, if there was a no answer to any of those questions, correct?
A Yes.
Q Did you do that for September, notify the program director?
A No.
Q Why not?
A In September, in the intensive care unit we were trying a different schedule that was essentially the following month was abandoned. In trying to construct a different work schedule, we were trying having individuals doing night shifts and day shifts, rotating shifts in an effort to meet the service demand, while trying to give people a little bit more time off. So there was, I think, for the most part, a collaborative attempt to work out a different schedule during September. It was not my -- I was not concerned at that point if there were some weeks that I worked longer or less or more days in a row or not.

So yes, I wasn't tallying up the hours so to speak for myself, during that month. It wasn't something I felt needed to be communicated to the residency.

In general, throughout the residency there may have been some weeks I worked more hours, some weeks I worked less. My general attitude, these things usually balance out. It wasn't my tendency to file complaints or create trouble or rock the boat. It all kind of evens out in the end. If I got stuck one week being there late, the next week it will all kind of even out.

At this time it wasn't something I was concerned about. The number of hours became a concern to me when I felt that it was being used against me.

Q It was being used against you?

A When I felt that I was under attack, I went back to look at those dates that were cited, realized that the time period for which I was being criticized was a time period in which I was working well beyond what was acceptable. At that point it became important to me to actually count it up.

Q Have you given me a complete answer to the question, is that complete?
A Yes. In terms of clarifying my statement on this form, yes.
(Defendant Exhibit G marked for identification.)
Q I've handed you what has been marked as Deposition Exhibit G. That is the same document for the month of October that you prepared and signed. Is that yours?
A Yes, it is.
Q Did you report this overage?
A Well, I think again, this is --
Q Can you answer yes or no to that question?
A I did report?
Q Correct, it says at the bottom if you answered no to any of the above questions, please contact your program director or the graduate medical education office. Did you do either of those?
A Yes, in the sense this form is turned into the residency program.
Q Did you do anything beyond turn the form in?
A No at that time I did not.
Q Did you ever raise an issue about your hours

with anyone?
A With anyone at any time?
Q Correct.
A I did inform ACGME. Again this was at a later date when I realized the correspondence between the criticisms that Dr. Norcia raised and what my working hours were at the time.
Q Did you inform anyone else besides ACGME of this later date you are referring to?
A I may have informed Dr. Shuck. I'm not certain about that, whether I just communicated it to ACGME.
Q You communicated it to ACGME, you may have communicated to Dr. Shuck, but you're not sure, anyone else?
A Not that I recall.
(Defendant Exhibit H marked for identification.)
Q Do you recognize the document I handed you as Deposition Exhibit H?
A Yes.
Q Who is Michael Jordan?
A Michael Jordan is an attorney.
Q Was he providing you legal representation at the time?

A I'm sorry, did you say was he?
Q Was he providing you legal representation as of the time this document was prepared?
A I believe he was.
Q The letter specifies that there is going to be six additional months of your residency; do I understand that correctly?
A Yes.
Q So the residency would ordinarily end the end of February, now was going to end the end of August according to this?
A Yes.

(Defendant Exhibit I marked for identification.)

Q Handing you what I've marked as Deposition Exhibit I. Do you recognize this document or the document that this is a copy of, not a very good one?
A I don't remember ever seeing this document before.
Q Did you meet -- I'm looking at the first paragraph. Did you meet with Dr. Wallace and Dr. Norcia to discuss your current prospective to make plans for the next six months clinical schedule, approximately early February?

MR. GORDILLO: Take the time to see the whole document.

Q Please, take your time.

A Could you repeat what your question was?

Q Yes. Did you meet with Dr. Wallace and Dr. Norcia in early February to discuss your plans for the six month schedule that was going to start March 1st?

MR. GORDILLO: Objection, foundation, go ahead.

A I do remember meeting with them to discuss the schedule. I don't recall the date, although I do recall it was before March 1st. I would have to --

Q Let me if see if I can give you another anchor. Was it before or after you signed the resident Fellowship contract for the six month period?

A That I don't know.

Q Was there a discussion about the fact that you would be entitled to an additional ten days of vacation and three meeting days as referred to in that paragraph, the first paragraph?

A Yes, I remember, I can remember receiving information about that again. I don't

remember if it was at this meeting. I do remember getting information about that.

Q Did you agree to a six month schedule that would include cardiothoracic, vascular, neuro anesthesia, ICU, pediatrics and an elective month in which you expressed an interest in doing TEE?

A Yes, I would say that is accurate.

Q TEE stands for what?

A Transesophageal echocardiography.

Q We will stick with TEE.

Was the arrangement that you and Dr. Wallace would decide on the sequence of rotations so that you would get the best experience and accommodate your schedule?

A It was planned that Dr. Wallace and I would arrange, discuss the sequence.

Q Did you have a discussion about having missed a previously scheduled Metro trauma rotation? I'm reviewing the document itself to see to what extent there is anything that is accurate or inaccurate in it.

A There was a conversation about Metro. I don't remember exactly at this time why it didn't happen when it was scheduled, what the

interference was subsequently. We did have a conversation about it. I do remember that it was eventually decided that it wasn't necessary.

Q Could that conversation have occurred in early February?

A It's possible.

Q You don't recall?

A I don't recall exactly. It is possible.

Q Did you have a discussion about having logged -- do you have a discussion about the fact that if you had logged 20 trauma cases, then it was your choice about whether you would incorporate Metro trauma into your six month schedule?

A Yes. Again I do remember having a discussion about that at some point.

Do you recall having a discussion about being excused to attend the Society of Cardiovascular Anesthesiologists meetings and workshops April 17 to April 22?

A Yes.

Q Had you tentatively signed up for those days on the anesthesia scheduling system, as referred to in the letter?

A I think that is possible. I don't remember exactly. I think that is possible.
Q Do you recall being asked about your perspective on how you were performing in a meeting with Dr. Wallace and Dr. Norcia as referred to in the beginning of the next paragraph?
A Again, I think that is possible. What I remember about this meeting was largely the scheduling rotation issue. I don't remember specifics of what we discussed in terms of the performance.
Q Did you refer to having requested feedback from a Dr. Parks as referenced in the letter?
A I don't remember. I do remember requesting feedback from Dr. Parks. I don't remember discussing that with Dr. Norcia or Dr. Wallace. That did happen. I did request feedback from Dr. Parks. It is possible I brought it up in the meeting.
Q Did they encourage you to request verbal feedback at the end of the day, so that it would be timely and interactive as discussed?
A Yes, I can remember Dr. Wallace saying something to that effect. Whether it was at

this meeting or another time --
Q Do you remember whether you decided at this meeting you would meet on a monthly basis around the middle of the month, as referred to in the final paragraph?
A That sounded correct.
Q You don't recall seeing this document itself I think was your testimony?
A Right, I've not seen this document before.
(Defendant Exhibit J marked for identification.)
Q I've handed you what has been marked as Deposition Exhibit J. Do you recognize the document this is a copy of?
A Yes.
Q Did you know at the time you signed this document whether or not under ACGME rules you might be able to satisfy your ACGME requirements by the end of June?
A No.
Q Why not?
A That is ABA you are referring to I believe.
Q It is an ABA requirement?
A Yes.
Q Thank you for educating me in that. You

didn't know about that at the time?
A No.
Q Were you not familiar with ABA rules when it came to this sort of issue?
A I was not familiar with their rules to that level of detail.
(Defendant Exhibit K marked for identification.)
Q I've handed you what has been marked as Deposition Exhibit K. Do you recognize this e-mail stream?
A Yes.
Q By the way, I have a little uncertainty. There are two pages. The second and third page, do they belong with this stream, are they an attachment to anything, or were they attached by me by mistake?
A I don't see that.
Q They don't associated with this e-mail at all?
A Not that I'm aware of.
Q Let's remove those from the exhibit. Have the exhibit consist of the e-mail itself.
Can you describe for me the circumstances leading up to you proposing the schedule that is set forth in the February 24,

2009 e-mail, that is circumstances pertaining to your scheduling of your rotations?

A I see something that doesn't make sense. In that previous memo that you gave me that I had not seen before, that was dated February 4th.

Q Correct.

A References the Metro and not needing to go to Metro. But, my e-mail here from the 24th indicates that at least at this point on the 24th I still believed Metro was a requirement.

Q A requirement?

A Yes.

Q I thought you were proposing this as your schedule, I didn't realize --

A I was proposing this as a sequence of events. I would not have included Metro as part of the sequence if I did not think I was required to include it.

Q I'm perplexed about that. Let me ask. You indicated that you had committed to doing ICU as part of your schedule. I don't see ICU down here. Am I missing it? Maybe I'm not reading it correctly?

A You are not missing it. I don't seeing it there either. I don't recall exactly the back

and forth. There were a couple of different proposed sequences of versions during this time period. So, I don't recall exactly when the conversations about Metro took place.

Also there was my belief when I made out the schedule, I must have been under the impression at this point that I wasn't required to be in the ICU again. There were conversations that went back and forth, do I need to put ICU in or not, Metro or not. There were other e-mails and conversations. This may be a fragment.

Q You recall conversations about whether you needed to do ICU or not?

A Yes, but I'm not recalling the specifics.

Q Wasn't the October situation that was pointed to, correctly or incorrectly, I think your view incorrectly, as grounds for the unsatisfactory evaluation and ICU rotation?

A Yes. Although I can also recall Dr. Norcia saying to me when I spoke to him in December, saying he wasn't concerned about my ICU work. That at some other later point I believed there was a point at which I was told that ICU was not going to be in the mix of these

months, then it came back in. I think there were some various -- this changed a few times.

Q If you were told at some point that ICU was not necessary, then it came back on, what do you recall about the circumstances of it coming back on? First tell me when the time frame is it came back on, then tell me what you recall of the circumstances?

A I do remember when it came back.

Q I'm not interested in when it came back. I'm interested in when you had discussions about it coming back. Then what the circumstances of those discussions were.

A The circumstances of it coming back as part of my schedule was soon after I requested some days off for an adoption.

Q Is it your testimony that the first time you discussed ICU coming back on your schedule was after you requested the days off for your adoption; is that your testimony?

A My testimony is that in this context of these last few months of my residency training, the ICU rotation reappeared soon after I made that request. As I said, there was some uncertainty as to whether or when I was going

to be doing the ICU preceding that.

MR. BIXENSTINE: Can you read back the question, please?

(Question read.)

Q Are you saying you don't understand that question?

A Yes.

Q There was a time you requested days off for adoption, correct, that was a point in time?

A Yes.

Q There is a time when there was an initial first discussion of ICU coming back onto your rotation, it was off, now it's back. A time for that, right, there has to be, there is always a first time for everything, correct, you may not know when it is, but there is; is that fair?

A Yes.

Q There is a T1 time, requesting the time off for the adoption. A T2 time, the first time you discuss ICU coming back on the schedule. I want to know is it your testimony that T2 occurred after T1?

A I guess my difficulty in giving you a yes or no answer to that question is that as I said,

the discussion about ICU was --

Q Ongoing?

A -- ongoing. Was also for a period of time in there quite vague.

Q So you can't identify a particular start time for ICU coming back because it wasn't necessarily ever off?

MR. GORDILLO: Objection. Is that fair?

A I would rephrase that.

Q Go ahead.

A During that time period starting in March and August, there was a period of time in there when I guess maybe I should say between February and August, there was a period of time during which I thought that I was going to be required to be in the ICU. A period of time when I thought, I was under the impression I was not required to be in the ICU. There was also times in there, I don't know if I have documentation of this, I was communicating with either Dr. Wallace and Dr. Norcia, or the chief resident, about whether I was going to be in the ICU and what is going on with the whole ICU question.

There was confusion in there. It was not on my schedule as a set thing. Then I requested the FMLA for my adoption. Soon after that, I was informed that I would be in the ICU during those two weeks during which I requested the adoption. That was --

Q That is your recollection?

A Yes.

Q What does L-I-V-E-R stand for?

A There is a call schedule for the liver transplant time.

Q Liver transplant?

A Yes.

Q If you see liver on your schedule, what would that mean?

A That would mean that whatever else one was -- if I'm remembering right -- whatever else one was doing during the day, you would be on the scheduled as a person to be on call, would be notified if there is a liver transplant going to occur.

(Defendant Exhibit L marked for identification.)

Q And I hand you what is marked as Deposition Exhibit L. You may notice that in this stream

it incorporates the last document I gave to you, starting at the bottom of the page?
A Yes.
Q So do I understand correctly from this that, three days after the February 24th e-mail of yours in which ICU is not on the schedule, you put it back on?
A Yes. That was probably, I couldn't remember the exact sequence, probably had a conversation with -- my guess is with Dr. Norcia, about whether I needed to put, did that need to be on the schedule. Something to that effect. So as of the 27th I was back under the impression I needed to do ICU.
Q You have a recollection of a conversation with Dr. Norcia between the 24th and 27th about this?
A I don't have a clear recollection of the conversation. My e-mail would suggest that I had revised information as of the 27th that -- I can remember having some exchanges with him that are, I don't remember when or where.
Q You have a recollection of exchanges with Dr. Norcia about ICU but you can't remember when they happened?

A No, I don't. This would imply to me --
Q Is that fair?
A Yes, it was probably in this time frame.
Q Then a week after that, you moved the ICU portion of your schedule from April to June?
A Yes, that looks correct. Although, I don't know this was a final where we ended up. Yes.
Q I assume you have no recollection of why you moved it from April to June?
A My recollection is that it had more to do with family obligations. I don't remember exactly what.
Q Metro, what is Metro again, what is going on with respect to Metro, that is trauma care, correct?
A Yes.
Q I understand what ICU stands for, intensive care unit. I guess I don't know exactly is Metro trauma lab, trauma center?
A Metro Hospital.
Q Is that a specialized ICU then that focuses on trauma, or something different?
A No, it's an anesthesia rotation, but because Metro is the regional trauma center, you would get more clinical exposure. We had a rotation

there.
Q If you have it slashed like this, does that mean first half of the month doing one, next half doing the other?
A Yes, that would be correct.
Q As of March 3, your proposal was to do Metro for the first half of August, ASU for the second?
A Yes.
Q ASU stands for?
A I'm not sure exactly what the letters stand for, but it's outpatient surgery.
(Defendant Exhibit M marked for identification.)
Q I have handed you what is marked as Deposition Exhibit M. I'm hoping this may do something with your recollections about the communication at this time concerning your schedule.
MR. GORDILLO: The last page looks like it's out of sequence.
MR. BIXENSTINE: So it is. Let's take that off. Looks like it stands on its own. Doesn't belong in the chain. Hold on to it, to I am going to mark this separately.

(Defendant Exhibit N
marked for identification.)

Q I will hand you Deposition Exhibit N, which is another e-mail related to this whole process. You have before you Deposition Exhibit M, which is two-page document. You also have Deposition Exhibit N which is a one-page document. Now what I'm seeing, I need you to comment on, explain to me, is how you have ICU in April as a revised scheduled you are proposing in a February 27th e-mail. Above that dropping ICU to June in a March 3rd e-mail. On the 12th, asking confirmation that you are in ICU in April. Then finally on the 14th getting an e-mail back from Dr. Wallace that April won't work for ICU. Do you recall what was going on at that time based on this sequence of events?

A I do recall that this was -- I seem to remember this was a mistake on my part. I was trying to clarify where I was working, and when. When I looked to see what I should be expecting or asking about, I looked at the wrong revision, which is what I was referring to when I said there was a little bit of back

and forth as to what the sequence of events was going to be. When Dr. Wallace attached the more recent proposal back to me, I said that's right that was the more recent one. That is what that was about.

Q Is it fair to say that at least as of the middle of March, ICU was on your schedule for June, Metro was on your schedule for August?

A Yes, I would say that was the plan at that time.

Q What happened to June ICU then, you did not do ICU in June?

A No.

Q What happened that led to that not happening?

A I don't remember why that didn't happen.

(Defendant Exhibit O marked for identification.)

Q I'm handing you what has been marked as Deposition Exhibit O. Do you recognize Exhibit O as a letter confirming that you have been approved for FMLA leave?

A Yes, I recognize this.

(Defendant Exhibit P marked for identification.)

Q I'm handing you what is marked as Deposition

Exhibit P. Do you recognize the e-mail at the top of the page?

A Yes, I do.

Q The purpose of your communication was to have Dr. Norcia find a way to fit additional days into your schedule to make up for days you were going to take as FMLA leave, that would go beyond the ACGME leave authorization for your residency, is that what is going on here?

A Again, it is the ABA that sets those.

Q Thank you. I made that mistaken twice, ABA 60 day limitation.

A Yes. I was attempting to find out whether there were additional shifts or ways that I could make those days up.

Q Were you provided the additional shifts that you needed?

A I believe. There were some additional shifts that were scheduled.

Q Did you take all of the FMLA days that you needed to take?

A No.

Q The reason you didn't take them all was why?

A Because I would have had to make them up. There were some shifts that were available.

It was difficult working extra shifts with being a resident and having three kids at home.

Q What FMLA days off did you want that you missed, that was going to happen, that you were not able to do?

A I remember that for the adoption itself I took a half a day, so I would have a minimum amount of time I would have to make up at another point. I believe that's -- I think that was the only FMLA time I used.

Q Was there some -- you say you were given some opportunities in terms of extra times to work, but because of family commitments you were unable to take those days, did I say that right?

A I don't remember the specifics in terms of how many hours or when, but I do remember that it appeared far too difficult to try to make use of that approach.

Q It was difficult simply because of why? The kids I assume, or family, can you explain further?

A This was my last month of residency presumably. I was in the process of moving my

family to Maryland. There were a lot of other obligations.

Q Obligations outside of the work you mean?

A Yes.

Q Moving your family, so on, so forth?

A Yes.

(Defendant Exhibit Q marked for identification.)

Q I've handed you what has been marked as Deposition Exhibit Q. There is a stream of e-mails here. I would like to start with the most recent. Also have P in front of you. You are asking Dr. Norcia about finding ways of working -- of getting make up days on July 9. Two days earlier you are asking whether you had been scheduled in Metro in August?

A Um-hum.

Q You are asking that of Christine Damovich and Marin Manex, who are those people?

A Chris is the residency coordinator. Marin was the chief resident at the time.

Q What role do they have in the scheduling process, as far as you understood it?

A They both played administrative roles. Marin was, she was in charge of the call schedule

under Dr. Wallace's supervision.
Q In charge of the call schedule?
A Yes. She would by extension have to at least keep track of who was doing what rotation when, so that the call schedule would correspond to that.
Q She kept track of rotations and also set the call schedule?
A Yes.
Q Who set the rotation schedule?
A That would be Dr. Wallace primarily.
Q How do you know that?
A That was one of his roles.
Q As far as you knew?
A Yes.
Q So you were asking about being scheduled at Metro. He responded and asks if you have done a trauma rotation?
A That was Marin who was responding.
Q Correct, excuse me, she. Forgive me. You responded you were bumped in January from Metro?
A Um-hum.
Q Then she says you are on Metro for the first two weeks and ICU for the second two weeks,

correct, that is the stream of the e-mail?
A Yes.
Q How was it that ICU got moved from June to the last part of August?
A I don't remember how or why that happened. I don't remember why it disappeared from June. I don't remember what occurred there.
Q For reasons you don't recall at this time, you didn't do it in June?
A Right.
Q So if you didn't do it in June, did you understand in June that you didn't have to do it anymore?
A I don't remember. I don't remember. What I do remember is that when I got this e-mail saying I was going to do it in the second two weeks of August, it came as a significant surprise.
Q Why was that a surprise if all that was left as of mid July would have been sometime in August? You were already in July, so you knew you weren't doing ICU in July?
A Correct.
Q You hadn't done it in June?
A Correct.

Q Where else could it go?
A Exactly. What I recall, I don't recall what occurred, why it didn't happen in June, but my --
Q I don't want you to guess now.
A I won't guess. I do remember being very surprised with this e-mail.
Q Where did you expect the ICU to happen?
MR. GORDILLO: Objection, foundation.
A I am thinking I was under the belief that it had been taken off the list of required things to do.
Q Do you have any idea how?
A I don't remember how that -- as I said, I don't remember why it didn't happen in June.
Q So you don't are remember why it didn't happen in June. You don't remember -- you have a belief you no longer had a requirement to do it, but you don't remember how that happened?
A Right.
Q Why do you have the belief you were no longer required to do it? That is not a fair question.
Why did you at the time as of here in

July, have a belief that you were no longer required to do it?

A I don't remember how that dialogue happened.

Q So you get this thing from Marin, do you have any idea how it got placed on the August schedule, how it became part of your August schedule after you didn't do it in June?

A My impression at the time was that, that was Dr. Wallace's decision.

Q What gave you that impression?

A He was the faculty person that directly supervised the schedule. That was not only the last two weeks of my residency, but the time period in which we were planning the adoption.

(Defendant Exhibit R marked for identification.)

Q I am handing you what is marked as Deposition Exhibit R. It refers to a discussion between you and Dr. Norcia about revising the schedule?

A Um-hum.

Q It purports to summarize the discussion that you and he had.

A Yes.

Q It asks you to confirm that those are the terms of a change to your schedule he was going to put in place?
A Yes.
Q I thought you said Dr. Wallace was in charge of the schedule, this is coming from Dr. Norcia?
A Yes.
Q Are they both in charge, one can be in charge whenever they want to, how was your understanding of how it worked, if you had one?
A I can't say I can speak directly how they divided it up.
Q Scheduling?
A Scheduling, however this response from Dr. Norcia was after I wrote a fairly strong letter to Dr. Shuck, who then I believe communicated that to Dr. Norcia, who in response to that arranged the schedule as you see.
Q Did you first communicate directly with either Dr. Wallace or Dr. Norcia about the desire to get your schedule changed before going to Dr. Shuck?

A I don't recall exactly.
Q You don't know whether you did or not?
A Correct. I don't remember whether I included Dr. Norcia directly in my communication with Dr. Shuck.
Q I'm not asking that. I'm asking why you, or did you communicate first with Dr. Norcia and Dr. Wallace separate and apart from Dr. Shuck, before then turning to Dr. Shuck?
A Did you say why?
Q I might have. I fouled up the question.

Did you communicate with Dr. Norcia or Dr. Wallace, separate and apart from Dr. Shuck, concerning your scheduling concerns before raising your concerns with Dr. Shuck?
A I don't recall.
Q You might have?
A It's not impossible. I don't recall.
Q Do you have some reason to believe that Dr. Norcia or Dr. Shuck were unwilling to alter your schedule, except after getting a letter that you wrote to -- start that again.

Are you saying that either Dr. Norcia or Dr. Wallace were unwilling to change your schedule unless you complained to Dr. Shuck

first?
A Yes.
Q What reason did you have for having that conviction at that time?
A Dr. Wallace had, because of previous interactions with him, had been essentially at least what was communicated to me, he was essentially removed from playing a role in my education or supervision.
Q You understand that to include scheduling?
A It was -- I think there are certain administrative things that can't be avoided. But, so he was still in charge of the schedule. If one is a cog in the wheel, is going to have some role there. However this was -- he took an action with my schedule in response to the FMLA request and also I think because of my impending graduation.

In any case, because of the history leading up to that particular event, I felt it necessary to communicate with Dr. Shuck in order to protect myself.
Q You've offered me an explanation for not communicating with Dr. Wallace. What is your explanation for not communicating first with

Dr. Norcia?
A I'm not positive I didn't communicate with Dr. Norcia. I think I would summarize it by saying that my residency program was becoming increasingly hostile environment. I felt that I needed to go outside the department to address concerns such as these.
Q What is it that occurred that connected up for you your request for FMLA leave to a scheduling in August that you were surprised by?
A The timing.
Q Timing of scheduling, is that what you mean?
A Yes, the timing of the decision to be in the ICU.
Q It occurred after you requested FMLA leave?
A Yes.
Q Any other reasons in your understanding that connect Dr. Wallace's decision about your scheduling, when it caught you by surprise, besides timing, that you know about?
A Not that I can think of at this point.
Q Were you able to satisfactorily establish your schedule for the remainder of your residency with Dr. Norcia in the aftermath of the e-mail

that is marked there someplace as Deposition Exhibit R?

A I believe so, yes. Although again here it is July, we seem to, all of us seem to still think Metro was necessary. I don't remember exactly when that conversation happened that Metro was not necessary. I was going to put this away. Perhaps this will help.

(Defendant Exhibit S marked for identification.)

Q Does the e-mail communication I marked as Deposition Exhibit S do anything to refresh your recollection about how your scheduling was ultimately set up for the month of August?

A Yes, I do remember this e-mail. Because as I remember, even after this July 15th e-mail, there was some difficulty trying to figure out what to do with Metro, and so it must have been sometime after this e-mail that we discussed that it wasn't necessary. This would be July 21st.

Q Was the schedule four August ultimately set up to your satisfaction?

A I believe, yes.

Q I have a document here, I finally put two and

two together. I'm going to ask what it is.

MR. BIXENSTINE: Can we take a quick break?

(Recess taken.)

(Defendant Exhibit T marked for identification.)

Q Handing you what is marked as Deposition Exhibit T. Is this a statement what was submitted with your Maryland application -- in support of your Maryland license that you referred to earlier, that was a statement that included a reference to a transient medical problem?

A Yes, I recognize this.

(Defendant Exhibit U marked for identification.)

Q Do you recall a document I marked as Deposition Exhibit U?

A Yes.

Q Do you recall the circumstances where you signed this?

A Yes.

MR. GORDILLO: Let's make a stipulation about that.

MR. BIXENSTINE: It's going to be off.

I'll stipulate that I don't believe that was part of the original. I don't know, it may be the only copy I have. I can certainly through wonders of technology get rid of it, and I will. The original will not have the highlighting on it.

MR. GORDILLO: Why don't we stipulate the original didn't have it, that way you don't have to worry about that.

MR. BIXENSTINE: Correct, I'll stipulate the original did not have it.

Q What were you saying?

A I remember this document.

(Defendant Exhibit V marked for identification.)

Q I've handed what you what has been marked as Deposition Exhibit V; do you recognize this document?

A Yes, I do.

Q What is it?

A This was a letter that I submitted to Dr. Norcia, to Dr. Nearman, possibly Dr. Shuck, in response to a meeting I had with Dr. Norcia and Dr. Nearman. Let me correct that. This was written in response to the

letter I received on January 7th.
Q Unsatisfactory performance letter, didn't I show that to you already?
A Yes. But I believe I wrote this prior to the meeting I had with Dr. Nearman and Dr. Norcia. I'm not certain of the sequence.
Q It was in the aftermath of the receipt of Deposition Exhibit H, which is the January 7, 2009 letter?
A Yes.
Q Were you being truthful and honest when you said I will comply with whatever plan is ultimately recommended by the committee?
A Yes.
Q Is it true at your meeting with Dr. Norcia and Dr. Wallace in November concerns were raised about quote, cognitive difficulties, unquote, is that true, the last part of the paragraph after the introduction?
A Can you restate?
Q Is it true at the meeting you had with Dr. Wallace and Dr. Norcia at the end of November, they raised concerns about cognitive difficulties?
A Yes.

Q Did the medication you were taking, I believe the name was Topamax, have an affect on your performance -- let me start again.

Were you being truthful and honest when you stated that Topamax had an affect on your performance as set forth in the second full paragraph of the letter?

A Yes, but with a clarification.

Q Okay. The clarification would be what?

A In retrospect I don't feel the medication was having a significant affect on my performance.

At this time, when I wrote this letter, I was in a situation of having been presented with a very serious adverse action, with no access to any appeal, or any other way of addressing or having my concerns or my viewpoint heard on this topic. I was attempting here, and I believe in some other communications, to communicate that I was open to a dialogue on this subject. I was attempting to be cooperative with the residency, to decrease antagonism. I would hope at least be able to professionally survive the rest of the residency. I had few options at that point. I was not in a

position of power.
Q Were you being truthful and honest when you stated here that you by January 7th, were aware of a subtle recovery in your verbal skills and speed of execution since discontinuing the medication at the end of November?
A I don't think in retrospect that is true. Again, I was trying to find some conceptual middle ground with my residency leadership to find some kind of compromise.
Q You are not saying you were deliberately misrepresenting yourself, are you?
A No.
Q You are saying you deliberately said something that was not true, or are you saying it is just not true as you look at it now, you believed it to be true at that time?
A I believe it to be possible at the time. I was trying to keep an open mind.
Q Possible. The words as I read them are, I am now aware of the subtle recovery of my verbal skills and speed of execution since discontinuing the medication at the end of November. Did you truthfully believe that

statement at the time you wrote it?
A I was also considerably less sleep deprived by that point.
Q That is not my question.
A I was willing at the time to attribute that to the medication. But --
Q I'm not asking whether you were willing. I'm asking were you truthfully aware at the time you wrote this, of a subtle recovery in your verbal skills and speed of execution since discontinuing the medication, were you or were you not?
A Yes, but again with clarification.
Q That clarification is?
A That I don't know that the medication had anything to do with it. I was looking for a simple explanation at the time. I don't know that truly was the explanation.
Q You didn't know at the time it was the explanation, is that your testimony?
A I thought perhaps at the time it was. I was willing to go with that explanation if it would be helpful.
Q Even though you didn't believe it?
A I would say I guess I'm not clear what you

mean, say that again.
Q Did you believe as of January 7th, that the subtle recovery in your verbal skills and speed of execution since discontinuing the medication at the end of November was attributable to discontinuing the medication, did you or not believe that?
MR. GORDILLO: Objection.
MR. BIXENSTINE: Go ahead. I don't want too much coaching on this. This is very serious stuff.
MR. GORDILLO: That's why I'm objecting here.
MR. BIXENSTINE: All right. Your objection is noted.
MR. GORDILLO: I want to make clear you are asking about what is in the document, or the statement you just made, because they are two different things?
Q Let's get it right. I'm asking you, did you believe at the time that the subtle recovery in your verbal skills and speed of execution since discontinuing the medication at the end of November was due to discontinuing the medication at the end of November, did you

believe that at the time?
A I thought that was an acceptable hypothesis to the extent I was willing to communicate that in the letter.
Q So when you are saying I am now aware, that is a way of conveying it is an acceptable hypothesis, is that what you are saying?
A Yes, this is not a controlled experiment. I don't think anybody could know that to an absolute certainty.
Q When you are saying you were aware of the subtle recovery, you were not being truthful, or were you? Were you aware at that time, as of January 7th, of a subtle recovery in your verbal skills? Were you aware of that? That is what it says here. The question is were you as it says aware of it?
A I was aware of some change. But again, I would qualify that.
Q Were you aware as it states here of the subtle recovery in your verbal skills, were you or weren't you?
A I think that I had convinced myself of that at the time.
Q Had you convinced yourself at the time of a

subtle recovery in speed of execution, had you done that too?

A I would say that again, these are subtle, not quantifiable. At the time, again, I was attempting to formulate some kind of explanation for what was happening. I was trying to formulate one that would allow me to continue to work with the residency, so I could continue on with my career. So had I kind of talked myself into that mind-set at that point, that that was okay, maybe that was the problem.

Q It doesn't say maybe there, does it?

A Again these are not --

Q It refers to what you were aware of, does it not, I'm now aware, doesn't it say that?

A Yes, it does. I was attempting to communicate to my residency program that I was willing to take a step in their direction, say okay this is going to be our interpretation of events, given that this can't be known to a scientific certainty. I was willing to say this will be the interpretation we will go with, what can we do from here.

Q Are you right now as we speak disavowing that

you were aware at the time of a subtle recovery in your verbal skills and speed of execution, are you disavowing that? Were you aware or not, that is my question?

A I think that after October I certainly felt better because I was less tired.

Q I didn't ask whether you felt better because you were less tired. That is not what it says here. It says you were aware of a subtle recovery in your verbal skills and speed of execution since discontinuing the medication. Were you aware of that or not?

A I would say yes. I guess I would say I do disavow that statement. I don't believe that that is true. At the time I was --

Q You did at the time?

A At the time I thought that was an acceptable hypothesis. Perhaps it was very subtle, perhaps maybe I do feel better. I think that there was certainly nothing dramatic. I felt maybe it is better. It was difficult to tell.

Q Are you saying you weren't really aware of a subtle recovery or were you aware at the time?

A I think that it is difficult for me to say at this point. I certainly was not aware of any

kind of dramatic change.
Q I'm not asking that. I'm only asking whether you were being truthful at the time you wrote this, in terms of what you were aware of, what you weren't, were you being truthful?
A I think I was not being deceptive.
Q I didn't ask whether you were being deceptive. I said are you being truthful?
A I think that I was honestly trying to interpret unquantified data.
Q Were you being truthful in saying you were aware, were you or weren't you?
A I think it's difficult to --
Q You can't answer that question, is that what you are saying?
A Yeah, I would say that I can't provide the kind of answer that you are looking for.
Q I'm just asking whether you were being truthful or not. You are saying you can't answer that; is that right?
A Yes, in the sense it was a very -- it was a very vague set of circumstances that were being described.
Q Does Topiramate have cognitive side effects as you set forth in this letter, does it?

A Yes, it has been described.
Q Cognitive side effects that are related to dose and speed of titration, as you describe in the letter, is that truthful?
A Yes.
Q Does the research literature suggest the side effects tend to be subtle and persistent; is that truthful?
A Yes. I did find one paper at least that suggested that. Although that is not what is generally -- not what is usually communicated about the medication. I did find a paper to support that.
Q Your testimony today is that although it's not usually communicated that Topamax has side effects that tend to be subtle and persistent, you nevertheless wrote in this document the research literature you reviewed suggested that?
A Yes.
Q Did you miss the research literature that suggested otherwise, is that what you are saying?
MR. GORDILLO: Objection.
A No. What I was attempting to communicate

here, was that in general practice for example if one looks at the package insert or Topamax, the general belief is that when cognitive side effects are seen with Topamax, it's generally related to speed of dosage increase or ultimately what dose one is taking.

Q Me question to you is, did the literature you reviewed at the time suggest that the side effects tend to be subtle and persistent?

A There was one paper that I found.

Q Did you look at any other papers besides one?

A I probably did a literature search. It was at the time -- again, I was trying to find a way to work with my program on this.

Q My question is not about your reasons for what you wrote. My question is about its truthfulness.

A Yes.

Q Did you review research literature other than one paper?

A Yes.

Q Did the research literature that you reviewed suggest that the side effects tend to be subtle and persistent, the research literature you reviewed?

A I know that I found one paper to support that. There may have been more than one. I don't remember exactly.

(Defendant Exhibit W marked for identification.)

Q I've handed you what has been marked as Deposition Exhibit W. Do you recognize this document?

A Yes.

Q Who is Dr. Longfellow?

A He's the director who I would have been going to work with in Ormond Beach.

Q Did you send this letter to Dr. Longfellow?

A Yes.

Q I'm looking at the first paragraph of the letter. Is it true that over the past year you had been taking Topamax for migraine prophylaxis?

A Yes, although I had been taking it longer than that.

Q How long had you been taking it?

A I don't remember exactly how many years.

Q Is it true that in recent months, that is months prior to January 15th of 2009 when you wrote the letter, the dose was increased?

A Yes.
Q Is it true that you developed side effects which affected your clinical performance?
A At this point I'm not convinced that is true.
Q Did you believe it at the time?
A I thought it was possible at the time.
Q I didn't ask whether you thought it was possible. Were you being truthful when you wrote this in the letter?
MR. GORDILLO: Objection, form.
Q At the time, were you being truthful?
A Again, as with the previous letter, I thought that it was possible. I was willing to work with that as a hypothesis. I don't think that is something that can be known as a certainty.
Q The words are, I quote, I developed side effects which affected my clinical performance. Did I read those right?
A Yes.
Q Did you develop side effects that affected your clinical performance?
A No, I don't believe so.
Q You did not. So then you misrepresented the circumstances of your condition in this letter?

A No.
Q Well, did you represent the circumstances of your condition truthfully in this letter?
A I truthfully represented a practical interpretation of events.
Q A practical interpretation, what does that mean?
A That means I was working in an extremely hostile environment, where I had few ways to protect myself professionally. I had no ways to protect myself professionally other than by accommodating the assessment that was being imposed on me.
Q So you wrote this because you felt it was your best chance of getting a job?
A No.
Q You didn't write the truth though, correct, this wasn't truthful, you didn't develop side effects which affected your clinical performance, that is a false statement, right?
A I feel much more certain now that it was false. At the time I was not positive that it was true or false, but I was again willing to accept that and go forward from there.
Q Tell me why you were saying it if you didn't

know whether it was true or false, to Dr. Longfellow, this fellow at Sheridan, why were you saying that?

A Because I felt it was a relatively simple way to explain to him what was a very complex situation.

Q Were you being truthful when you wrote that you continued to receive satisfactory evaluations from faculty during the time that this dosage was increased?

A Yes, I believe that is correct.

Q So when you talk about evaluation of Dr. Johnson, how does that fit in with that statement?

A I was referring to the time period of the second half of 2008.

Q Dr. Johnson's evaluations are covering November of 2008, that is the second half, correct?

A Yes. That was up until that point. Then in November my evaluations were fine. I think that this was written in -- when did I write this, in January.

Q Correct.

A I hadn't received any negative evaluations,

written from faculty since May of 2008 I believe at that point. Until I think -- actually, no, that would have postdated Dr. Norcia's statement now that I think about it.

Q Plus you were aware of Dr. Johnson's evaluations, were you not, as well as Dr. Zahniser's, as well as other --

A Dr. Zahniser, that would have been a year prior. Dr. Johnson I discounted.

Q When you say I continued to receive satisfactory evaluations, what time frame were you talking about?

A I don't know. I'm not very clear about that.

Q When you say here I did not identify the medication as a problem until December, is that a truthful statement?

A I would say it's not entirely accurate. It would be the end of December I guess that it came up as an issue.

Q This is about you identifying the medication as a problem, not it becoming an issue. It says I did not identify the medications above, isn't that what it says?

A Yes.

Q Is it true you did not identify the medication as a problem until December?
A I would say that is not entirely accurate. Again, it's a matter of I think I was kind of approximating.
Q Meaning what?
A Meaning that it didn't come up until the end of November.
Q The end of November?
A Yes, when we discussed it in the meeting.
Q Is it truthful to say, if I make that correction, I did not identify the medication as a problem until the end of November?
A Yes.
Q So then is it fair for one to conclude at the end of November you did identify the medication as a problem?
A I identified the medication as a possible hypothesis.
Q A possible hypothesis?
A Um-hum.
Q You wrote probable here, you did not write possible hypothesis?
A I was trying to simplify a situation for --
Q For Dr. Longfellow?

A Yes.
Q What is his specialty, what is his background?
A He is an anesthesiologist.
Q You were trying to simplify the situation for another anesthesiologist?
A Yes.
Q Why did you feel it needed to be simplified for him?
A Because I was hoping that I would still be able to take a position with him. It would be helpful to have a way to explain or describe the reason for my not being able to show up when we agreed I was going to show up.
Q It says I received an unsatisfactory evaluation for my October ICU rotation; is that a truthful statement?
A Again I don't think it in detail accurately reflects the timing of events.
Q You had an October ICU rotation, correct?
A That's correct.
Q Did have an unsatisfactory evaluation for that rotation, is it truthful when it says that?
A Yes, which I received at the end of December, which is not exactly when the medication issue came up.

Q You mean that is when it was entered into the system, end of December?
A Yes.
Q You were informed of it in November?
A Yes.
Q You were informed of it October 14th?
A No, not in any detail at all.
Q I didn't ask about detail. I said you were informed of unsatisfactory evaluations on October 14th, detailed or not, correct?
A Details are important. Yes, there was mention of it October 14th.
Q It says in the beginning of the second paragraph, as you know, if unsatisfactory performance is identified at any time during our final six months of training, the entire six month block must be repeated, is that a truthful statement?
A Yes.
Q That is UH policy as in its residency program?
A That is the American Board of Anesthesiology.
Q ABA policy?
A Yes.
Q I think I know the answer to this, I'll ask it anyway. You say to Dr. Longfellow, I stopped

the medication -- I promptly stopped the medication as soon as this concern arose, have noted a significant difference. Were you being truthful at the time it was a significant difference you noted?

A No, I would say I was coloring things to describe the situation as resolved.

Q When you referred to family and colleagues as also noting a significant difference, that was coloring too?

A I would say yes.

Q Were there any family or colleagues that noticed a difference?

A Not that I'm aware.

(Defendant Exhibit X marked for identification.)

Q I've handed you a document marked as Deposition Exhibit X; do you recognize it?

A Yes.

Q Is that your signature on it?

A Yes.

Q The document refers to an October 14th meeting, does it not?

A Yes.

Q It says October 14th of 2008 you and

Dr. Wallace and Dr. Norcia met to discuss your clinical performance, correct, that is what it says?

A Yes.

Q Is that a truthful statement?

A That we meet on October 14th.

Q To discuss your clinical performance; is that truthful?

A Yes, that was the original agenda.

Q It states multiple unsatisfactory evaluations had been received; is that a truthful statement?

A Yes.

Q It says that we had met earlier in your residency about performance issues. It says that you and Dr. Wallace and Dr. Norcia had met earlier in your residency about performance issues; is that a truthful statement?

A I don't know exactly what they are referring to there.

Q You don't know?

A No.

Q You don't recall now?

A No.

Q You wouldn't have signed it, would you, had it not be truthful at the time you signed it?
A No, I was signing to acknowledge that I was given the letter, not to agree with the statements.
Q You would sign any letter sent to you because you received it?
A No.
MR. GORDILLO: Objection.
Q Why did you sign this one?
A I was required to acknowledge that I was being given the letter.
Q Does it say anything on there about signing to acknowledge?
A No.
Q Your testimony today is your signature conveyings nothing about your agreement to anything in this letter?
A Correct.
Q You just signed it?
A I signed it, yes, to confirm that I was receiving this piece of paper.
Q Did you tell Dr. Norcia and Dr. Wallace at the time that I don't necessarily agree with things in this letter, I'm just signing it to

acknowledge it, did you tell them that?
A. I don't remember. No, I don't remember.
Q. Did you give them any reason to believe at that time that you signed this, that you disagreed with anything in it?
A. Yes.
Q. What do you recall telling them at the time concerning a matter in this letter with which you disagreed?
A. I don't recall what specifically I objected to verbally. I do know I objected in writing. I don't remember what I objected to verbally at the time.
Q. Do you recall objecting in writing to the contents of the November 24 letter and its reference to what happened on October 14; do you recall doing that?
A. Yes.
Q. The thing you are recalling is an objection you raised after the meeting at the end of November, correct?
A. Yes.
Q. You are saying at the end of November you decided to raise objections about matters arising at the October 14th meeting?

A I objected to a number of things. The characterization of the October 14th meeting itself was one of those.
Q That is what I'm saying, you decided at the end of November to raise objections concerning what occurred at the October 14th meeting?
A I would say yes, I was not provided with any documentation of the October 14th meeting.
Q Until you signed this document on November 24th?
A Yes.
Q You decided to sign it, then write objections to it afterward?
A Yes.
Q Were you told at the October 24th meeting that there were evaluation concerns that you're not appreciating the situation, or cannot process and react to the information or situation at hand. Were you told that at the October 14th meeting? Middle of the second paragraph.
A I don't recall those exact words were used.
Q How about the substance of them?
A There was some concern raised about my responsiveness but neither Dr. Norcia nor Dr. Wallace could provide me with a specific

example.
Q This is something you asked for at the October 14th meeting, give me a specific example, you asked for that?
A I remember asking Dr. Wallace that. I don't recall at which meeting it was. He said I can't give you an example.
Q Dr. Wallace said he couldn't?
A Yes.
Q Were you also told about concerning evaluations from pain, OB and ICU at the October 14th meeting, as reflected in this letter?
A Yes.
Q Did you actually respond during the October 14th meeting that you could not identify any reason for any delay in response that people might have raised the concern about, as reflected in the third paragraph.
A I don't remember specifically making that statement.
Q Did you offer any explanation for the concern raised to you in the October 14th meeting, any explanation for why those concerns were happening?

A No. The concerns weren't specified in a way that allowed a response.
Q Did Dr. Wallace and Dr. Norcia at the October 14th meeting discuss ways for you to improve?
A Not that I recall.
Q Is that one of those they might have, might not have, you don't recall as we speak now?
A I don't recall a conversation at that time that was discussing ways to improve.
Q Do you deny there was any discussion of that nature?
A No, I wouldn't say I remember it clearly enough to deny it.
Q Were you told at the October 14th meeting that the competency committee had reason to give you an unsatisfactory for your final six month period?
A No.
Q You were not told that?
A Not to my memory in October.
Q Are you denying that was said to you?
A Again, at the time of that meeting, I had been on duty for about 28 hours, so there may be things in that meeting I don't recall. Again, the discussion of the clinical issue or the

performance issue was fairly vague. I don't recall being told at that time that that was a threat.

Q Were you told that there was going to be a meeting with you again in four to six weeks to review further evaluations and update your progress?

A Again, I don't remember that exactly. That seems very plausible to me. Makes sense.

(Defendant Exhibit Y marked for identification.)

Q Handing you what is marked as Deposition Exhibit Y. I'm assuming you've never seen the document before. If you have, let me know.

A No.

Q It refers to a meeting between you and Dr. Norcia and Dr. Aronson on November 24th,; isn't that right?

A Yes, correct.

Q Did Dr. Wallace ask you at that meeting on November 24th if you were on any psychotropic medication that might impair your performance?

A Yes.

Q Did he tell you that from his perspective you had not made the program director aware of any

such medication?
A I don't remember making that statement.
Q You had not made anyone -- you had not made the program director aware that you were taking Topamax, correct?
A Correct.
Q Did he tell you he believed you were required to do that?
A I know he said that at a later date. I don't remember it during that particular meeting.
Q Did you inform Dr. Norcia and Dr. Wallace at that meeting that you may be on some medication that may or may not impair your performance?
A I brought up the Topamax at that meeting, yes.
Q Did you say at that meeting that the Topamax may or may not impair your performance?
A I don't know that I used exactly those words. I brought it up at a possibility.
Q You had been using it for three years?
A I believe I said something about how long I had been on it. I would say it had been at least three years.
MR. GORDILLO: Can I step out a minute?

(Recess taken.)

(Defendant Exhibit Z marked for identification.)

Q I've handed you a document marked as Deposition Exhibit Z. Do you recognize this document?

A Yes.

Q Is this a document you sent to Dr. Nearman?

A Yes.

Q In the second paragraph, after the first paragraph, this was a document you prepared after meeting with him? I ask that because in the first paragraph it says thanks for taking the time to meet with me.

A I don't remember. I might have been implying that he had scheduled a time to meet with me, that we arranged a time. I'm not positive. I don't know.

Q I understand it may be you were thanking him for a meeting that had not yet occurred. I understand.

A I'm fairly sure that is the sequence.

Q Were you being truthful when you said in this letter to him that the medication was having a negative affect on your functioning?

A I would have to respond as with the other letters, I was willing to accept that as a possibility and work with it.
Q You don't believe it now?
A No, I don't believe it now.
Q Were you also not saying something you believe now when you told him I'm alarmed that I needed a whack in the head to identify Topamax as a problem, you don't believe that now either?
A No, I don't. That is how I was thinking about it at the time.
Q Did you believe it at the time?
A Again, I was going with that hypothesis.
Q Did you believe at the time that Dr. Norcia and others were correct in noting a change in your performance?
A I think that, again I think that I was endorsing that interpretation.
Q You don't believe it now?
A No.
Q You didn't believe it?
A Except in the sense as far as that sentence is concerned, except in the sense that upon reviewing my scheduling during that period of

time, occurred to me there may have been a fatigue factor.

Q The only thing you believe now is that any performance change they noted was just fatigue?

A Yes, if there were performance changes.

Q You don't necessarily even believe that?

A Correct.

Q You didn't believe it at the time you wrote it either?

A I was -- at the time I wrote this?

Q Correct.

A You know as in any profession, one has to continuously learn, continually be open to feedback. If somebody says, gives you some negative feedback, it's important to be open minded, not reject it out of hand.

Q You would agree this is not rejecting something. You said the words I am sure. I'm sure that Dr. Norcia and the others were correct. You weren't sure they were correct at the time, correct, that is not a true statement, you weren't sure they were correct?

A No, I was trying --

Q To appease Dr. Nearman?

A Yes.
Q When you say here while I don't believe Dr. Wallace and Norcia have intended this process to be punitive, you see where it says that?
A Yes.
Q At the time you did believe they intended it to be punitive, correct?
A I became more and more convinced of that, I didn't want to believe that.
Q I'm saying at the time, did you believe, January 6, 2009 did you believe that Dr. Wallace and Dr. Norcia intended this process to be punitive?
A At that time I was willing to believe that they didn't.
Q You were being truthful about that statement when you said I don't believe, as of January 6th, that Wallace and Norcia intended this process to be punitive, that is truthful, right?
A I would say that is also a conciliatory statement.
Q It can be truthful and conciliatory. But was it truthful?

A I would say I was perhaps not convinced at that point they intended it to be punitive.
Q You didn't believe it at the time?
A I would say I considered it a possibility. I was willing to keep an open mind, so yes, I would say I wasn't convinced.
Q That is not what it says here. You didn't say I'm not convinced, you said you didn't believe it?
A Yes, I think I was --
Q Do you recognize the distinction between saying I'm not convince of something, and saying I don't believe something?
A Yes, I think there is a subtle distinction.
Q At the time, was it truthful to say that you didn't believe they intended the process to be punitive, was that truthful at the time you said it?
A I would say it's not entirely truthful.
(Defendant Exhibit AA marked for identification.)
Q I've handed you what is marked as Deposition Exhibit AA. Do you recognize this as a letter you prepared on November 28, as a response to the reviews of mid October, on November 4th?

A Yes, although there was the same letter with one minor revision I resubmitted.
Q A date or something?
A Yes, I mistyped it.
Q So at the beginning of this letter you refer to the feeling that the decision to remove you was not justified. You say I understand however the highest priority is to insure patient safety and clinical reliability; do you see that?
A Yes.
Q Was that a truthful statement?
A Yes.
Q It says also in the next paragraph, during my time in this program I received a pattern of evaluation regarding my need to improve my efficiency and speed of response. Is that a truthful statement?
A Yes.
Q You then go through and refer to a variety of folks here?
A Yes.
Q You refer to Dr. Zahniser?
A Um-hum.
Q His evaluation covered his work with you in

October of '08, did it not?
A I had thought it was. I wasn't positive but I had though that it was.
Q Prior to that?
A I thought it was possibly in January of '08. I wasn't certain of the dates.
Q You are referring to -- I think the evaluation will show when the date is. You were aware at the time you wrote this of an evaluation which he said he considered you the worst resident and very weak, that was one you were aware of, whenever it happened?
A Yes, I remember there were two from him. The first one was the one we discussed back at the beginning. Then the second one was one which he rated it as satisfactory, but then there were side comments.
Q Dr. Johnson's evaluations, those were from the October ICU, correct?
A I don't recall exactly which dates I worked with him in February. So I believe that he had something negative to write about me in February. I don't know that I actually had his September or October evaluation at this point. I may have. I don't recall that I

did.
Q You mention, the reason I say that is I see your point. You were referring to evaluations both in February and October, were you not, it says so right there in your references?
MR. GORDILLO: Objection. That is not what it says.
Q It says I regret I was not able to manage in February or October?
A Correct. These were two times I worked with him. However in this letter, I was referring to some written evaluations that were handed to me at the October meeting. I believe that the written one from Dr. Johnson, to which I was referring here, referred to February.
Q You were aware at the time though of his negative assessment of you in October, you had been told that by coordinators?
A I didn't have to be told it by anybody. It was very clear.
Q Let's go over to the November 24 meeting then. What I would like you to do, I tried to give you as much documentation as I have that relates to that. What I would like you to do is, it is common for people to both describe a

conversation and explain it at the same time. That is human nature. For our purposes I need to separate those, for this purpose. I need you to describe what happened between you and Dr. Norcia and Dr. Wallace, and deferred until you are done explaining what it means, its significant to you, or any other kind of ways of commenting on what was going on. So that I have these things separate.

What I would like you to do first in your best recollection go through and explain to me what happened at the November 24 meeting. Let me start it off by saying is it not fair to say the beginning of that meeting is when they presented you that letter, that we just went over, that refers to what happened in October?

A I couldn't say.

Q I thought maybe that was something you could remember. Tell me what you did recall now of the back and forth between you and Dr. Norcia and Dr. Wallace at this November 24 meeting. Again when you are done, we can talk about what it means, your assessment of it, so on.

A I don't remember how the meeting opened. I

remember asking for specific examples of something that was causing concern.

I remember at least Dr. Wallace saying he couldn't give me an example. I remember Dr. Wallace asking me if I was taking psychotropic medication and/or if I was on drugs, to which I said no. Then stated I had been taking Topamax for several years for migraines. I don't remember how much further discussion there was about that.

I believe I brought up EAP, with the thought they could act as a third party monitor, to introduce some objectivity. I'm not remembering any other real specifics of how the back and forth went at that meeting.

Q I apologize. You completed as best you can do in terms of your recollection? I didn't mean to ignore you. I wasn't sure you were complete.

A No, I'm --

Q Did Dr. Wallace at this meeting tell you that he intended to rate your performance for the period of July 2008 to December 2008 as unsatisfactory, and require you to extend your residency by six months in order to graduate?

A Not at the meeting in November, I don't believe, no.
Q Was there a meeting in December when he said that then?
A Not in December. I know in November it was --
(Defendant Exhibit BB marked for identification.)
A To the best of my recollection at the November meeting I believe it was raised as a possibility that action was going to be taken.
Q Not definitive?
A Not definitive.
Q Have a look at Exhibit BB. If I understand correctly, this is a document you prepared but choose not to submit, correct?
A Correct. Because I was told it was not an option.
Q So, you mentioned in the second paragraph of that letter that Dr. Wallace indicated to you at a meeting that you refer to as last week, the document is dated December 23rd, that he intended to rate my performance for the period of July 2008 to December 2008 as unsatisfactory, would require to extend the residency by six months in order to graduate.

Paraphrasing the substance, I think I got it right.

A I think that is probably accurate. I don't remember having a meeting in December. It makes sense to me that there was one. I can't picture it in my mind. I think that is likely accurate. I know that I did know he was intending to do that sometime in that time frame. Certainly by the time I got the thing from Dr. Norcia that was entered a few days after this.

Q You had a conversation with an outfit a UH called the GME office, what does that stand for?

A Graduate medical education.

Q It was a conversation about your options in terms of either accepting a six month training extension without an appeal or refusing the extension, being potentially subject to disciplinary action. Do you recall having a conversation with someone from the office about that?

A Yes. I think that sounds accurate.

Q Who told you those were your options? Who from the GME office are we talking about?

A It would have been either Will Rabello or Dr. Shuck. I don't remember which of the two verbalized that to me.

Q I'm not asking you here for any content. Did you consult with legal counsel in terms of deciding which of those options you would take?

A Yes.

MR. GORDILLO: That's the end.

Q Would that be Mr -- the basketball player?

A Jordan.

Q Michael Jordan. It's up to you, if you don't want her to answer, it is okay. His name is on it. Was it Michael Jordan?

MR. GORDILLO: As far as I know. It wasn't me.

MR. BIXENSTINE: That's the end of it.

Q Was it Michael Jordan?

A Yes.

(Defendant Exhibit CC marked for identification.)

Q Handing you what has been marked as Deposition Exhibit CC, this represents itself as an e-mail exchange between you and Dr. Nearman in late January?

A Yes.
Q Do you recognize this as such?
A Yes.
Q He asked you in his e-mail to you, he says is it okay to tell him, referring to Dr. Longfellow?
A Yes.
Q He is asking is it okay to tell him that your performance was not satisfactory, and that upon evaluating the possibilities as to why, we came up with the potential drug side effect; did I read that correctly?
A Yes.
Q Did you respond to him in terms of whether it was okay or not?
A I believe I told him verbally or in this e-mail that I felt that was an acceptable way to proceed. It was essentially in line with what I had written to Dr. Longfellow.

(Defendant Exhibit DD marked for identification.)

Q I handed you what is marked as Deposition Exhibit DD. Have you ever seen this document before, or any part of it?
A No.

Q Is it fair to say that until today you were unaware of the content of the assessment provided through this letter by Dr. Norcia in February?
A Yes, I've not seen this before.
Q The assessment is three pages long, followed by a document which appears to have your signature on it, am I right, it is document you signed?
A Yes.
Q Dated 11-25-80?
A Yes.
Q I don't know whether the last two pages are really part of this document or not. I don't have the competency to tell you. I'm asking you, do these relate to the documents that go before them, or should these be removed as being somehow extraneous?
A I think they are probably extraneous.
Q It looks like statistics on things you've done, or someone has done, I can't say it was you or not.
A Yes.
Q In that case, let's remove that.
(Defendant Exhibit EE

marked for identification.)

Q I've handed you what has been marked as Deposition Exhibit EE. Is this a copy of the complaint you submitted to ACGME?

A Yes.

Q Did you ever receive a written response from them in terms of communicating to you their resolution of your complaints?

A Yes, I believe I did.

Q What was the resolution?

A The resolution was that the ACGME doesn't intervene in individual cases.

(Defendant Exhibit FF marked for identification.)

A That as long as a program is in substantial compliance with their requirements, they can retain their accreditation.

Q I'm handing you what has been marked as Deposition Exhibit FF. Do you recognize that?

A Yes.

Q What is that?

A This would have been sent not to me but to the residency program.

Q The first page was not sent to you. Thank you.

A Correct.
Q The second?
A The second is the form that FCVS uses that one has notarized in order to initiate a request for them to prepare a packet.
Q That is your signature on that particular document?
A Yes.
Q You had a meeting with Dr. Wallace and maybe Dr. Norcia, it arose shortly after you -- in early June of 2009?
A Um-hum.
Q It was a meeting I believe in which Dr. Wallace raised a variety of performance issues with you; do you remember that meeting?
A Yes, he raised a variety of criticisms.
Q Performance issues for him. I didn't mean to be judgmental. Was it just a meeting between you and he, or was Dr. Norcia there as well?
A As I remember Dr. Norcia was also at that meeting. I believe he had to leave the room several times.
Q Was there a set of documents that were shown to you at that meeting, statements by people?
A I don't remember that they were shown to me.

I remember Dr. Wallace coming in with a lot of papers.

Q Did he review the papers with you?

A As I remember he referred to them, but I don't recall him going over the documents or charges with me in a detailed way. I don't remember him handing them to me.

Q Did he refer to the circumstances of them? Get into the specifics of them, or was it more general than that?

A I believe he did bring up some specific situations or events.

Q Will you relate to me the same way you did with the November 24th meeting what you can recall of the exchange between you and Dr. Wallace and Dr. Norcia was involved as well at that particular meeting, we can decide whether to talk about any commentary or assessment of what that all means?

A I seem to recall that I was called out of the OR to attend a meeting I believe. No, that may not be true. No, that is not true. This meeting was scheduled.

It was with Dr. Wallace and Dr. Norcia. Dr. Norcia was called out of the

room I seem to remember several times during the meeting. I seem to recall that that meeting in tone became a little bit more confrontational between myself and Dr. Wallace. Dr. Wallace raised some criticisms from I think that was when the evaluation from Dr. Rubin that I think was referenced at the beginning of this meeting.

Q Correct.

A Also from Dr. Hacker we similarly discussed earlier. He indicated to me that he felt that -- I don't remember exactly how he put it. That he didn't think that I would successfully complete the residency. I'm trying to remember what the exchange was with Dr. Norcia during that meeting. I seem to remember him expressing distress that I doubted his good intentions, something to that effect.

I don't remember if that was one of the -- if that was one of the conversations in which Dr. Wallace threatened me with termination. It may have been. If it was, I probably commented on it in a letter. I don't recall right at this moment whether that was

said. I do remember him asking me if I considered what I might do if I didn't do anesthesiology. My responses during that meeting, I remember -- I seem to remember were focused in part around responding to some of the criticisms regarding Dr. Hacker and Dr. Rubin.

Q You said you recall responding with respect to them?

A Yes, I believe. At least at this point I'm not remembering much else about the back and forth.

MR. BIXENSTINE: Can you give me a couple minutes? This may be wrap up time. I need a chance to go over things here, see if that is the case.

(Recess taken.)

MR. BIXENSTINE: We have no further questions.

MR. GORDILLO: I have a couple I want to follow-up on.

REDIRECT EXAMINATION

By Mr. Gordillo:

Q Let's take a look, Dr. Aronson, at Exhibit H. You were asked some questions about that

document.
A Yes.
Q Specifically you were asked what your understanding was with respect to how that document might affect the extension of your training; do you recall that?
A Yes.
Q You said you understand that that document was extending your training six months into August, correct?
A Yes that was what I was told by the program director.
Q Could you explain how you concluded from that letter that is Exhibit H that the program was being extended to August?
A It's not actually stated in this letter. This letter says there is an additional six months. I was told by the program director that they were going to start those six months tacked onto the end, so to start in March. That is not stated in this letter.
Q Let's look at Exhibit W. You were asked some questions about Exhibit W and some of the things you wrote.
In particular you were asked about a

statement at the end of the first paragraph when you wrote that you received -- I'm sorry, you wrote I did not identify the medication as a problem until December, when I received an unsatisfactory evaluation from my October ICU rotation; do you see that?

A Yes.

Q More specifically, I think you gave testimony that you had received notice of an unsatisfactory evaluation for your October ICU rotation, when you had the meeting that you testified about on October 14th; do you recall that testimony?

A Yes, although that is not entirely accurate.

Q Let's clarify what way that was inaccurate?

A I wasn't -- the October meeting provided me evaluations that were from the first half of the year. There was some comment about concerns regarding the beginning of October, but I was not given an unsatisfactory evaluation for that month's rotation at that time. That didn't occur until the end of December I believe.

Q Let's look at Exhibit X, you just mentioned that you had been at this October 14th

meeting, you had been presented with an unsatisfactory evaluation, right?
A Yes.
Q The Exhibit X, you testified that it was accurate, the second sentence of that document was accurate when it says multiple unsatisfactory evaluations had been received, right?
A Yes.
Q How do you know that multiple unsatisfactory evaluations had been received?
A I was given a printout of what evaluations had been turned in.
Q At this October 14, 2008 meeting you discussed those unsatisfactory evaluations?
A I wouldn't say that we discussed them. They were provided to me and there was some very brief comments about them, not discussed in detail.
Q Is that why you believe it's accurate as written that multiple unsatisfactory evaluations had been received?
A Yes, those were the ones from the first half of the year.
Q Of those multiple unsatisfactory evaluations,

what was the latest date of those?
A That would have been May of 2008.
Q Were any of the multiple unsatisfactory evaluations that were presented to you at the October 14, 2008 meeting from your training period between July and December of 2008?
A No, none of them were.
MR. GORDILLO: That's all. Thank you, Dr. Aronson.
MR. BIXENSTINE: No questions.
MR. GORDILLO: We will read.
(Deposition concluded at 6:24 p.m.)
(Signature not waived.)
- - -

I have read the foregoing transcript from page 1 through 224 and note the following corrections:

PAGE LINE REQUESTED CHANGE

_____
Sarah Aronson, M.D.

Subscribed and sworn to before me this _____ day of _____, 2010.

_____
Notary Public

My commission expires: _____.

State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga.)

I, Constance Versagi, Court Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, Sarah Aronson, M.D., was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by her was by me reduced to stenotypy/computer in the presence of said witness, afterward transcribed, and that the foregoing is a true and correct transcript of the testimony so given by her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel, or attorney of either party, or otherwise Interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 23rd day of December, 2010.

_____

Constance Versagi, Court Reporter and
Notary Public in and for the State of Ohio.
My Commission expires January 14, 2013.